

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

DIRECT TRANSFER OF LICENSE

FROM NUCLEAR MANAGEMENT COMPANY, LLC &

WISCONSIN ELECTRIC POWER COMPANY

TO FPL ENERGY POINT BEACH, LLC

DPR-24 & DPR-27 POINT BEACH NUCLEAR PLANT, UNITS 1 & 2

DOCKET NOS. 50-266 & 50-301

1.0 INTRODUCTION

By application dated January 26, 2007, Nuclear Management Company, LLC (NMC), Wisconsin Electric Power Company (WERCO), and FPL Energy Point Beach, LLC (FPLE), requested consent by the United States Nuclear Regulatory Commission (NRC), pursuant to 10 CFR 50.80, to the proposed direct transfer of the operating licenses for the Point Beach Nuclear Plant, Units 1 & 2 (PBN1, PBN2, and PBN collectively). The proposed direct transfer will be the result of the execution of the Asset Sales Agreement signed by NMC, WERCO, and FPLE on December 19, 2006. Upon closing of the sale, ownership, control and operation of PBN would change from NMC and WERCO to FPLE.

2.0 BACKGROUND

Pursuant to Section 184 of the Atomic Energy Act of 1954 (AEA), as amended, and 10 CFR 50.80, this application seeks NRC's consent to the transfer by WEPCO of its ownership interests and NMC of its operating authority to FPLE as both owner and operator. PBN is located about thirty miles southeast of Green Bay and about ninety miles north-northeast of Milwaukee in east central Manitowoc County, Wisconsin, on the west shore of Lake Michigan near Two Rivers, Wisconsin. PBN consists of two Westinghouse pressurized light-water moderated and cooled system units originally designed to generate 1518.5 megawatt thermal or approximately 523.8 megawatt electric. However, each unit has been uprated to 1540 megawatt thermal and 538 megawatt electric.

The United States Atomic Energy Commission (AEC) issued the construction permit for PBN1 on July 19, 1967, and for PBN2 on July 25, 1968. The operating licenses were issued by the

CONTAINS NON-PROPRIETARY INFORMATION

AEC on October 5, 1970, for PBN1, and March 8, 1973, for PBN2. The NRC issued renewed operating licenses on December 22, 2005, for PBN1 and PBN2. Accordingly, PBN1 license will expire in 2030, and PBN2 license will expire in 2033.

Transfer of the licenses will also result in FPLE being authorized, pursuant to the general license in 10 CFR 72.210, to store spent fuel in the Independent Spent Fuel Storage installation located at the Point Beach facility. FPLE will assume all of NMC's obligations and commitments under the general license and all NRC orders pertaining thereto.

However, as a potential interim step towards the sale of PBN, WEPCO and FPLE have also signed an Interim Operating Agreement that would permit WEPCO, at its option, after completion of the spring 2007 BPN1 refueling outage, and upon receipt of applicable regulatory approvals, to transfer operating authority, but not ownership, to FPLE prior to the closing of the sale of PBN. As part of this application, WEPCO, FPLE and NMC are also seeking the NRC's consent to permit the transfer of the operating authority for PBN from NMC to FPLE prior to the closing should WEPCO choose to exercise this approach. This interim transfer of the licenses would involve the transfer of the operating authority from NMC to FPLE only, and would not change the financial responsibilities or qualifications or the decommissioning funding status of WEPCO as the 100 percent undivided owner of PBN.

3.0 REGULATORY EVALUATION

The applicants' request for approval of the direct transfer of the license for PBN discussed in this Safety Evaluation, is made pursuant to 10 CFR 50.80. Section 50.80(a) of 10 CFR states "No license for a production utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing."

In addition, the requirements of 10 CFR 50.80(b) & (c) apply. Section 50.80(b) states that an applicant for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 50.34 of this part "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the applicant were for an initial license. . ." Section 50.80(c) states that "the Commission will approve the application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto."

4.0 EVALUATIONS

Section 50.33(f) of 10 CFR states "Except for an electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21(b) or 10 CFR 50.22, information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry

CONTAINS NON-PROPRIETARY INFORMATION

out, in accordance with the regulations of this chapter, the activities for which the permit or license is sought.”

Section 50.2 of 10 CFR states that an electric utility is “any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.”

The NRC staff finds that FPLE does not qualify as an “electric utility” as defined in 10 CFR 50.2 because most of its electric revenue, used to recover costs, will not be set by a separate regulatory authority or by the entity itself. Thus the staff has determined that FPLE must meet the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f). FPLE, a non-electric utility, contingent to a transfer due to a proposed sale, is therefore subject to a full financial qualification review by the NRC. Because FPLE is not an electric utility and subject to a full review, FPLE must provide the following information:

1. Information that demonstrates that FPLE possesses or has reasonable assurance of obtaining the necessary funds to cover estimated operating costs for the first five years of facility operations and indicate the source(s) of funds to cover these costs.
2. FPLE as a newly formed entity, therefore pursuant to 10 CFR 33(f)(3), must submit information that shows: a) the legal and financial relationship FPLE has or proposes to have with its stockholders or owners, b) its financial ability to meet any contractual obligations to any entity which they have incurred or propose to incur, c) any other information considered necessary by the NRC staff to enable it to determine the applicant’s financial qualification.

This information will demonstrate how FPLE meets the requirements of 10 CFR 50.33(f). Also, 10 CFR 50.33(k)(1) requires that FPLE provide information described in 10 CFR 50.75 indicating reasonable assurance that funds will be available to decommission the facility.

In accordance with 10 CFR 50.33(f) and the Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (NUREG-1577, Rev. 1), a projected income statement for the five year period from 2008 to 2012 is required. The projected income statement is based on an assumed 92 percent annual capacity factor, and should show that FPLE’s anticipated revenues from sales of energy and capacity from PBN provide reasonable assurance of an adequate source of funds to meet FPLE’s anticipated operating expenses.

The NRC staff notes that the application states that through its affiliates Florida Power & Light Company and FPL Energy, FPL Group Inc. is a major producer of electric energy, with over 30,000 Mwe of generation capacity in operation in the United States. FPL Group Inc. has been in business for more than twenty years and has leveraged its expertise in generation to build a rapidly growing independent power producer business with facilities in operation, construction, or advanced stages of development in twenty-six states. FPL Group Inc. is a publicly traded company with shares trading on the New York Stock Exchange.

CONTAINS NON-PROPRIETARY INFORMATION

The NRC staff notes FPL Group Capital has senior unsecured debt ratings of “A-“ and “A2” by Standard & Poor’s and Moody’s, respectively, as stated in application. In addition, according to the applicant, FPL Group Capital, as a wholly-owned subsidiary of FPL Group Inc., benefits from the financial strength of FPL Group Inc. FPL Group Inc. has a corporate credit rating of “A” by Standard & Poor’s. Through its wholly-owned subsidiaries, FPL Group Inc. serves more than four million electric customers in Florida, and produces more than 30,000 Mwe by operating fossil, hydroelectric, and nuclear units. As of December 31, 2005, FPL Group Inc. reported assets exceeding \$33 billion and recorded annual revenues in excess of \$11 billion.

FPL Energy Point Beach, LLC
Summary of
PROJECTED INCOME STATEMENT
(In \$ millions)

	<u>FY2008</u>	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
TOTAL REVENUE:	\$	\$	\$	\$	\$
Total Operating Expense:	\$	\$	\$	\$	\$
Operating Income:	\$	\$	\$	\$	\$
Other Income/Expense Tax	\$	\$	\$	\$	\$
NET INCOME AFTER TAX	\$	\$	\$	\$	\$

The staff has chosen to test the sensitivity of the financial information in the above Projected Income Statement by analyzing a scenarios that changes the assumptions for revenue. The staff notes that if prices per megawatt hour were to drop by an average of 10.0 percent, the effect on the five year Net Income stream is a drop from the projected average of \$ _____ million per year to a possible \$ _____ million per year. The NRC staff considers that the impact on Net Income under this scenario is sufficiently reasonable as to provide assurance of adequate funding to recover costs of operations. No other scenario analysis was done for change in capacity factor.

According to the applicants, the revenues in the Projected Income Statement are based on FPLE’s sale of 100 percent of PBN’s energy generation at prices established under a long-term power purchase agreement between WEPCO and FPLE through 2030 for PBN1 and through 2033 for PBN2. Prior to closing of the transaction, WEPCO has the option to elect a Purchase Power Agreement term of sixteen years for PBN1 and seventeen years for PBN2.

Further, the applicants state in order to provide added assurances that FPLE will have sufficient funds available to meet its operating expenses for PBN, the staff notes that FPL Capital will, at the closing of the proposed sale and transfer of the licenses, enter into a Support Agreement with FPLE to make funding of up to \$70 million available to FPLE. Under the terms of the Support Agreement, FPLE will have the right to obtain such funds from FPL Group Capital to

CONTAINS NON-PROPRIETARY INFORMATION

the extent FPLE determines necessary to pay the expenses to safely operate and maintain PBN. This funding may also be available to meet any obligations associated with nuclear liability premiums, including FPLE's share of retrospective premiums pursuant to 10 CFR 140.21. The applicants state that the Support Agreement will not terminate until PBN permanently ceases commercial operations and may not be modified or amended without thirty days prior written notice to the NRC.

FPLE is a Wisconsin limited liability company created to acquire and operate PBN, and its principal place of business will be the state of Wisconsin. As a limited liability company, FPLE has no directors or management committee. However, the January 26, 2007, application contains the names and addresses of the principal officers of FPLE, all of whom are declared to be United States citizens.

FPLE is a direct, wholly-owned subsidiary of ESI Energy, LLC, which is a direct, wholly-owned subsidiary of FPL Energy, LLC. FPL Energy, LLC is in turn a direct, wholly-owned subsidiary of FPL Group Capital, which is a direct, wholly-owned subsidiary of FPL Group Inc. FPL Group Inc. is a public utility holding company incorporated in 1984 under the laws of the state of Florida.

The NRC staff notes the application states that through its affiliates Florida Power & Light Company and FPL Energy, LLC, FPL Group Inc. is a major producer of electric energy, with over 30,000 Mwe of generation capacity in operation in the United States. FPL Group Inc. has been in business for more than twenty years and has leveraged its expenses in generation to build a rapidly growing independent power producer business with facilities in operation, under construction, or in advanced stages of development in twenty-six states. FPL Group Inc. is a publicly traded company with shares trading on the New York Stock Exchange. Through its various subsidiaries, FPL Group Inc. owns or operates six nuclear power plants at four sites. These are:

St. Lucie Nuclear Power Plant, Units 1 & 2
Turkey Point Nuclear Plant, Units 3 & 4
Seabrook Station
Duane Arnold Energy Center

The NRC staff finds FPLE's Projected Income Statement shows that the anticipated revenues from sales of energy and capacity from PBN provides reasonable assurance of an adequate source of funds to meet PBN's anticipated expenses during the five year period covered by the projections. Therefore, NRC staff has determined that no further financial qualifications analysis or review is necessary.

Based on this review, the NRC staff has determined that FPLE has met the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f).

5.0 DECOMMISSIONING

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of public health and safety. The regulation at 10 CFR 50.33(k) requires that an applicant for an operating license

CONTAINS NON-PROPRIETARY INFORMATION

for a utilization facility contain information to demonstrate how reasonable assurance will be provided and that funds will be available to decommission the facility.

As stated by the applicants, FPLE will assume responsibility for eventually decommissioning PBN. FPLE will receive an amount at least equal to the NRC minimum decommissioning funding amount from WEPCO's qualified fund, upon closing of the transaction, which will be placed in an external trust fund maintained by FPLE. Depending upon action by the Internal Revenue Service in response to a private letter ruling request and other regulatory actions, WEPCO may transfer more than the NRC minimum decommissioning funding amount, up to the entire qualified fund balance, currently estimated to be \$563 million at closing of the sale and transfer of the licenses. These funds will be held in an external trust fund segregated from FPLE assets and outside of FPLE's administrative control. Investment of the funds will be managed in accordance with applicable requirements in 10 CFR 50.75(h)(1).

The NRC is not required to distinguish between Qualified and Non-qualified decommissioning trust funds because this distinction is regulated by the IRS. However, NRC regulations require that a minimum decommissioning funding amount be maintained as specified under 10 CFR 50.75. Therefore, the NRC staff will review the Minimum Decommissioning Trust Fund balance of the FPLE post-transfer of the license in the next Biennial Decommissioning Trust Fund Report, as stipulated in 10 CFR 50.75(f)(1).

6.0 ANTITRUST REVIEW

The Atomic Energy Act of 1954 as amended (AEA) does not require or authorize antitrust reviews of post-operating license transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (June 18, 1999). The application here postdates the issuance of the operating licenses for units under consideration, and therefore no antitrust review is required or authorized. The staff notes that there are no existing antitrust license conditions in the subject license. Accordingly, there are no antitrust-related issues to resolve with respect to proposed conforming license amendments.

7.0 FOREIGN OWNERSHIP, CONTROL, or DOMINATION

Sections 103d and 104d of the AEA prohibit the NRC from issuing a license for a nuclear power plant to "any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." The NRC's regulation, 10 CFR 50.38, contains language to implement this prohibition.

As stated in the application, FPLE is not directly or indirectly owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In seeking to become the licensed owner and operator of PBN, FPLE is not acting as agents or representatives of another entity.

As a limited liability company, FPLE has no directors or management committee; however, all of the principal officers are United States citizens, and are expected to remain so after the proposed sale.

CONTAINS NON-PROPRIETARY INFORMATION

In light of the above, the NRC staff does not know or have reason to believe that FPLE will be owned, controlled or dominated by an alien, a foreign corporation, or a foreign government.

8.0 NUCLEAR INSURANCE and INDEMNITY

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission's regulations at 10 CFR Part 140 require that the current indemnity agreement be modified to reflect FPL Group Inc. as a new parent company licensee of PBN.

In accordance with the Price-Anderson Act, FPLE will be required to provide primary insurance and participate in the secondary retrospective insurance pool. It will also be required to maintain property insurance as specified in 10 CFR 50.54(w). Information provided in the application demonstrates that FPLE will be able to satisfy applicable insurance requirements of the NRC and the Price-Anderson Act.

Consistent with NRC practice, the NRC staff will require FPLE to provide satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended license. Because the issuance of the amended licenses are directly tied to completion of the proposed direct license transfer, the order approving the transfer will be conditioned as follows:

Prior to completion of the transfer of the license, FPLE shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 of the Commission's regulations.

9.0 CONCLUSION

In view of the foregoing, the NRC staff finds that, subject to the conditions discussed herein, FPLE is qualified to be the holder and operator of Palisades to the extent proposed in the application, and that the direct transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributor: MADusaniwskyj, NRR/DPR/PFPB

Date: May 21, 2007

CONTAINS NON-PROPRIETARY INFORMATION