

NRC SAFETY EVALUATION
OF DIRECT TRANSFER OF CONTROL OF MATERIAL LICENSES
FROM GENERAL ELECTRIC COMPANY
TO GE-HITACHI NUCLEAR ENERGY Americas LLC

DIRECT TRANSFER OF THE FOLLOWING LICENSES:
SNM-960 AND SNM-1270, VALLECITOS NUCLEAR CENTER;
SNM-2500 MORRIS OPERATIONS;
CERTIFICATES OF COMPLIANCE AND QUALITY ASSURANCE PROGRAMS

I. INTRODUCTION

By letter dated January 19, 2007 (ML070250521), General Electric Company (GE) submitted an application requesting Nuclear Regulatory Commission (NRC, the Commission) approval of the proposed direct transfer to GE-Hitachi Nuclear Energy Americas LLC of certain materials licenses, certificates of compliance (COC), and quality assurance program approvals. The application was supplemented by letters dated January 25, February 23, March 2, March 9, March 14, March 26, May 18, June 4, and July 6, 2007 (collectively, the Application). This safety evaluation report (SER) applies to Special Nuclear Materials (SNM) licenses SNM-960 and SNM-1270 for GE Nuclear Energy Vallecitos Nuclear Center; and to SNM-2500 for GE Nuclear Energy Morris Operations (GEMO). This SER also applies to three COCs for which GE is holder (71-5926, 71-5939, and 71-9228), seven COCs for which GE is a registered user (71-9225, 71-9277, 71-5979, 71-6648, 71-9208, 71-9010, and 71-9204), and associated quality assurance program approvals. The SER documenting the NRC staff review of the transfer of the reactor licenses at the Vallecitos Nuclear Center is contained in separate correspondence.

In accordance with 10 CFR Part 2, Subpart M, a notice of receipt of the complete license transfer application was placed on the NRC web site at <http://www.nrc.gov>. The NRC also published notices of consideration of approval in the *Federal Register* (72 FR 15171-15172, March 30, 2007, and 72 FR 17942-17943, April 10, 2007), offering an opportunity to provide comments and to request a hearing with respect to major fuel cycle facility License SNM-960 (issued pursuant to 10 CFR Part 70) and independent spent fuel storage installation (ISFSI) license SNM-2500 (issued pursuant to 10 CFR Part 72). No comments or requests for a hearing were received.

II. BACKGROUND

In the request for approval of the transfer, GE described the transaction. In the transaction, GE will transfer certain of its nuclear businesses and operations in the United States to GE-Hitachi Nuclear Energy Americas LLC, a newly-formed entity. This new entity will be wholly-owned by GE-Hitachi Nuclear Energy Holdings, LLC. GE, through various subsidiaries, will retain a 60% ownership interest in GE-Hitachi Nuclear Energy Americas LLC, while Hitachi, Ltd, a Japanese

company, will retain the remaining 40% through various United States subsidiaries. There will be a direct transfer of control of GE's existing licenses to GE-Hitachi Nuclear Energy Americas LLC, when GE transfers assets and the GE licenses to this entity, which will be controlled at that time by its intermediate parent company, GE-Hitachi Nuclear Energy Holdings, LLC.

The request involves the transfer of the licenses held by GE for its Vallecitos Nuclear Center in Pleasanton, California, and its Morris Operation Spent Fuel Storage Installation in Morris, Illinois. The transfer would include two materials licenses and four test reactor licenses at the Vallecitos Nuclear Center and one materials license at the Morris Operation. The staff was informed by the applicant that on June 4, 2007, GE's nuclear business was restructured as described above, excluding the NRC-licensed activities for Vallecitos and Morris and employees and assets associated with the activities under those licenses, and that these excluded assets and employees will be transferred to the new company when NRC consent to transfer the licenses is received.

GE also provided notice of the planned transfer of various Certificates of Compliance issued under 10 CFR Part 71 and associated quality assurance programs, as well as GE's 10 CFR Part 50 Appendix B Quality Assurance Program governing its reactor service business. NRC consent to these transfers is not required; however, GE requested the issuance of conforming amendments to reflect GE-Hitachi Nuclear Energy Americas LLC, as the Certificate holder or registered user. Accordingly, the NRC staff's action on those conforming amendment requests is documented under separate correspondence, as indicated in Section V of this SER.

GE separately requested approval from NRC's Office of International Programs for amendments to effect the transfer of certain import and export licenses pursuant to 10 CFR 110.50(b)(6). On April 3, 2007, NRC issued 3 export license amendments (XCOM1019/06, XCOM1124/01 and XR135/06) changing the licensee's name and address.

The request for approval of the transfer does not include License SNM-1097 held by Global Nuclear Fuel - Americas LLC, for the Wilmington, North Carolina, fuel fabrication facility, nor does it include other NRC licenses to be held by GE or its subsidiaries. There will be no direct or indirect transfer of these licenses.

III. REGULATORY REQUIREMENTS

Pursuant to Section 184 of the Atomic Energy Act (the Act), and 10 CFR 70.36, no license granted under the regulations in Part 70 and no right to possess or utilize special nuclear material granted by any license issued pursuant to Part 70 shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license, to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing. Likewise, NRC regulations in 10 CFR 72.50 provide that no license issued under Part 72 for an ISFSI 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 gives its consent in writing. Control over licensed activities is construed as the authority to decide when and how that license (licensed material and/or activities) will be used.

In addition, pursuant to 10 CFR 72.50(b)(1), a license transfer application must include as much of the information described in 10 CFR 72.22 and 72.28 with respect to the identity and the technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. Part 70 license applicants are subject to financial assurance and recordkeeping requirements for decommissioning pursuant to 10 CFR 70.25.

In materials licensing, pursuant to Section 57c, 69, and 81 of the Act, the NRC must make a finding that issuance of the license for SNM, source material, or byproduct material would not be "...inimical to the common defense and security, and would not constitute unreasonable risk to the health and safety of the public." The Commission makes the same finding when consenting to a transfer of control over materials licenses. Pursuant to the Act and 10 CFR 70.36 and 72.50, the Commission, in reviewing the requested materials license transfer, will secure full information about the transaction and determine whether the transfer is in accordance with the Act before giving its written consent; in doing so, it must determine that the proposed transferee is qualified to be the holder of the license and that the transfer is consistent with applicable provisions of the law and the regulations and orders issued by the Commission.

IV. DISCUSSION

The NRC staff reviews a materials license request to determine whether the applicant has provided an adequate basis to support NRC's consent to the transfer, in accordance with the standards described above. In doing so, the NRC staff evaluates the sufficiency of various categories of information, to the extent applicable to the request. This information includes a complete description of the transaction, as well as any name or contact information changes; any changes in personnel or duties that relate to the licensed program; any changes in the organization that relate to the licensed program; the status of any surveillance program; confirmation that all records concerning the safe and effective decommissioning of the facility will be transferred to the transferee or to NRC; and confirmation that the transferee will abide by all constraints, conditions, requirements, and commitments of the transferor. The NRC staff has reviewed the GE application with respect to these criteria.

A. TRANSFERS OF MATERIAL LICENSES

The NRC staff has determined that the application contains a complete description of the transaction, including the new name of the owner and the name and telephone number of the licensee contacts. There were no changes in personnel or duties that relate to the licensed programs and no changes to the organization, facilities, equipment, or procedures that relate to the licensed programs, except for the new directors and officers identified in the request. There are no changes in the use, possession, location, or storage of the licensed materials associated with any of the licenses. Accordingly, the NRC staff finds GE-Hitachi Nuclear Energy Americas LLC is technically qualified to be the holder of the licenses.

Surveillance items and records associated with all of the licenses will continue to be maintained without regard to the change in ownership. All records concerning safe and effective decommissioning/closure of the facilities, public dose and waste disposal by release to sewers, incineration, radioactive material spills, and on-site burials will be transferred to GE-Hitachi Nuclear Energy Americas LLC. All facilities and activities that are the subject of the request are

active, with the exception of three test reactors at VNC, whose licenses have been modified to possession-only status. No decontamination and release of any facilities will occur prior to the transfer of control. GE-Hitachi Nuclear Fuel Americas LLC, will be made aware of the extent and levels of contamination and applicable decommissioning requirements and will agree to assume full liability for the decontamination of the facilities and sites governed by the NRC licenses, in accordance with applicable NRC decommissioning requirements.

The NRC staff finds that the licensee has arranged for the transfer and maintenance of records important to the safe and effective decommissioning of facilities involved in licensed activities. The parties have confirmed, in writing, that they accept full responsibility for the decommissioning of the site, including any contaminated facilities and equipment. The NRC staff finds reasonable assurance that the transfer of the subject licenses will have no effect on the licensee's decommissioning records, that the transaction will not involve the physical relocation of any records, and that all records concerning the safe and effective decommissioning of the facilities will remain with the licensee. On the closing date, the status of the licensed facilities, including, but not limited to the status of decontamination and decommissioning activities, will be identical to their status prior to the closing date.

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of the public health and safety. The regulations at 10 CFR 70.25 and 72.30 require that GE-Hitachi Nuclear Energy Americas LLC, provide information indicating how reasonable assurance will be provided that funds will be available for decommissioning. GE, as a parent company of the newly-formed GE-Hitachi Nuclear Energy Americas LLC, reviewed and, where necessary, revised its decommissioning cost estimates to reflect the costs as of the time of the transfer. GE has submitted, by letter to the NRC dated May 18, 2007 (ML071570284), a parent company guarantee to cover the estimated cost of decommissioning the facilities of its subsidiary licensee, GE-Hitachi Nuclear Energy Americas LLC. GE has assets that exceed six times the decommissioning obligation it will assume on behalf of GE-Hitachi Nuclear Energy Americas LLC. GE's bond rating is investment grade. Based on the NRC staff review of this and other information, GE's financial test submittal satisfies the requirements of 10 CFR Part 30, Appendix A, for a parent company guarantee of financial assurance for decommissioning and thus is financially qualified to provide adequate decommissioning funding assurance for the subject facilities. The NRC staff concludes that the parent company guarantee satisfies the financial assurance requirements for 10 CFR 70.25 and 72.30.

The staff has documented this as a condition of the Order and licenses, stating that prior to completion of the transfers of the licenses, GE-Hitachi Nuclear Energy Americas LLC, shall provide the NRC staff satisfactory documentary evidence of a parent company guarantee or another method authorized by and meeting the requirements of 10 CFR § 70.25(f) or 72.30(c), respectively, for decommissioning funding assurance for the licenses, demonstrating an amount no less than that required of licensees under 10 CFR § 70.25 or 72.30 of the Commission's regulations, respectively. GE's May 18, 2007, letter provides acceptable documentary evidence in support of the transfer of the licenses to GE-Hitachi Nuclear Energy Americas LLC, such that this Order and license condition is satisfied.

By attachment to an e-mail from C. Monetta to M. Mendonca dated June 4, 2007, GE provided a letter dated June 1, 2007, from Richard Jones, Director, Underwriting Department, American Nuclear Insurers (ANI), to Mr. Harold J. Neems, GE Energy, documenting ANI's agreement to

change the Named Insured under policies and certificates for Vallecitos and Morris from General Electric Company to GE-Hitachi Nuclear Energy Americas LLC, effective the date the NRC approves the transfer of the licenses.

In order to ensure that the NRC is timely notified of the transfer's completion, GE must inform the Director of the Office of Nuclear Material Safety and Safeguards, in writing, of the date of closing of the transfer of licenses SNM-960, SNM-1270, and SNM-2500 prior to closing. This requirement is included in the associated Order concerning the SNM-960 and SNM-1270 transfer requests and in the separate Order concerning SNM-2500. If the transfer of the licenses has not been completed within 1 year from the date of issuance of the Order, the Order shall become null and void; however, on written application and for good cause shown, such date may be extended by order.

GE-Hitachi Nuclear Energy Americas LLC, as stated in the application as supplemented, will abide by all commitments and representations previously made by GE with respect to the licenses. These include, but are not limited to, maintaining decommissioning records, implementing decontamination activities, and eventually decommissioning the sites. The staff has imposed this as a condition of the Order and licenses.

The NRC staff concludes that, subject to the above conditions, the application provides adequate assurance of compliance with all constraints, conditions, requirements, and commitments of these materials licenses.

For the reasons stated above, the NRC finds that the applicant has: (1) provided all required information to support the NRC's approval of the transfer of the subject licenses; (2) provided an acceptable description of the status of the licensed facilities with regard to ambient radiation levels and fixed and/or removable contamination; (3) confirmed, in writing, that the parties accept full responsibility for the decommissioning of the site, including any contaminated facilities and equipment; (4) provided adequate financial assurance for decommissioning; and (5) arranged for the transfer and maintenance of records that are important to the safe and effective decommissioning of facilities involved in licensed activities.

B. FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE

Furthermore, in order to determine that requested license transfers would not be inimical to the common defense and security, and would not constitute unreasonable risk to the health and safety of the public, the NRC considers foreign ownership, control and Influence. Upon completion of the transaction, GE (through its subsidiaries) will hold a majority 60 percent indirect ownership interest in GE-Hitachi Nuclear Energy Holdings, LLC, the intermediate parent company of GE-Hitachi Nuclear Energy Americas LLC. Through one or more United States subsidiaries, Hitachi, Ltd. will hold a 40 percent indirect ownership interest in GE-Hitachi Nuclear Energy Holdings, LLC. According to the application, Hitachi's minority ownership share in GE-Hitachi Nuclear Energy Holdings, LLC, will not allow Hitachi's minority ownership share to exercise control or Influence over the licensed activities of its subsidiary.

As originally stated in the January 19, 2007, submittal, Hitachi's minority interest in GE-Hitachi Nuclear Energy Holdings, LLC's Board of Managers will not allow for foreign control or Influence. GE-Hitachi Nuclear Energy Holdings, LLC's Board of Managers will comprise seven representatives, five of whom will have voting rights. Three voting members will be appointed

by GE and will be United States citizens, while two voting members will be appointed by Hitachi, Ltd. The other two Board of Managers members will have no voting rights. Most decisions of the Board of Managers will be made on the basis of a majority vote. While certain decisions of the Board of Managers may not be made without the prior approval of the Board Managers designated by Hitachi, Ltd., none of those decisions relate to the safety of operations or safe shutdown of the licensed facilities. The January 19, 2007, letter represented that potential influence over NRC-licensed activities will be further mitigated by delegating decision-making authority to a subcommittee of the Board of Managers controlled by United States citizens.

In supplemental information provided on February 23, 2007, the applicant updated and revised information in the January 19 application with respect to potential foreign ownership, control, or Influence of GE-Hitachi Nuclear Energy Americas LLC. These updates included clarification on the position of the president and CEO of GE-Hitachi Nuclear Energy Americas LLC, along with additional information about the previously proposed Nuclear Oversight Committee of GE-Hitachi Nuclear Energy Holdings, LLC's Board of Managers.

First, the Manager of the Vallecitos Nuclear Center will report directly to the Vice-President, Reactor Facility Safety and Security of GE-Hitachi Nuclear Energy Americas LLC, with respect to any matters involving nuclear safety or NRC compliance associated with the reactors at Vallecitos. The Vice-President, Reactor Facility Safety and Security of GE-Hitachi Nuclear Energy Americas LLC, will report to the Manager of GE-Hitachi Nuclear Energy Americas LLC. (The Manager of GE-Hitachi Nuclear Energy Americas LLC, is Mr. Thomas Saddle mire, a United States citizen.) The CEO of GE-Hitachi Nuclear Energy Americas LLC, will have no authority over the Vice-President, Reactor Facility Safety and Security of GE-Hitachi Nuclear Energy Americas LLC, in matters dealing with safety and security of the Vallecitos reactors. (Mr. Andy White, a citizen of the United Kingdom and a permanent resident of the United States, is the designated CEO of GE-Hitachi Nuclear Energy Americas LLC.)

Second, GE withdrew the proposal to form a Nuclear Oversight Committee of the GE-Hitachi Nuclear Energy Holdings, LLC's Board of Managers. GE-Hitachi Nuclear Energy Americas LLC, will exercise full control over all nuclear safety and NRC compliance matters. In addition, the GE-Hitachi Nuclear Energy Holdings, LLC's Board of Managers' rules of governance will preclude Hitachi Ltd. from exercising any control over such matters.

The applicant further states that the Formation Agreement between GE and Hitachi, Ltd., will contain provisions ensuring that Hitachi members of the GE-Hitachi Nuclear Energy Holdings, LLC's Board of Managers cannot exercise control over GE-Hitachi Nuclear Energy Holdings, LLC's actions related to NRC-licensed activities. In particular: (1) the presence of GE-Hitachi Nuclear Energy Holdings, LLC's Board of Managers members representing greater than 50 percent of the total ownership interests will be required to constitute a quorum; and (2) for most decisions, the affirmative vote of the (GE-Hitachi Nuclear Energy Holdings, LLC's Board of Managers) members representing greater than 50 percent of the total ownership interests is required for the Board to act. In addition, a single member present at a Board meeting may control all of the voting power of that entity. Since Hitachi, Ltd. will hold only a 40 percent interest in GE-Hitachi Nuclear Energy Holdings, Hitachi, Ltd. cannot exercise control.

Subsequently, because of the changes to the Formation Agreement between GE and Hitachi, Ltd. mentioned above, GE is withdrawing Attachment F to the January 19, 2007, application, "Charter of the Nuclear Oversight Committee of the Board of Managers of GE-Hitachi Nuclear

Energy Americas LLC.”

Given the substantial ownership interest in the proposed licensee’s intermediate parent company to be held indirectly by a foreign company, the staff will require as conditions of the Order and the licenses the following:

1. The Manager of the Vallecitos Nuclear Center, the Vice-President, Reactor Facility Safety and Security of GE-Hitachi Nuclear Energy Americas LLC, and the Manager of GE-Hitachi Nuclear Energy Americas LLC, shall be US citizens. These individuals shall have the responsibility and exclusive authority to ensure and shall ensure, that the business and activities of GE-Hitachi Nuclear Energy Americas LLC, with respect to the subject licenses are at all times conducted in a manner consistent with protection of the public health and safety and the common defense and security.
2. The commitments/representations made in the Application regarding reporting relationships and authority over safety and security issues and compliance with NRC requirements shall be adhered to and may not be modified without the prior written consent from the Director, Office of Nuclear Reactor Regulation, the Director, Office of Federal and State Materials and Environmental Management Programs, or their designees.
3. GE-Hitachi Nuclear Energy Americas LLC, shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation and the Director, Office of Federal and State Materials and Environmental Management Programs within 30 days of filing with the U.S. Securities Exchange Commission (SEC), any schedule 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that discloses beneficial ownership of a registered class of General Electric stock.

In light of the above, the NRC staff does not know or have reason to believe that GE-Hitachi Nuclear Energy Americas LLC, will be owned, controlled or dominated by an alien, a foreign corporation, or a foreign government.

For the reasons stated above the NRC staff finds that the proposed transferee, GE-Hitachi Nuclear Energy Americas LLC, is qualified to be the holder of subject licenses and that transfer is consistent with applicable provisions of the law, and the regulations and orders issued by the Commission.

V. CONFORMING AMENDMENTS

In addition, the NRC staff has reviewed the requested conforming amendments to SNM-960, SNM-1270, and SNM-2500 (including the Technical Specifications in Appendix A to SNM-2500) to change the indicated license holder from General Electric Company to GE-Hitachi Nuclear Energy Americas LLC. Based on the information furnished by GE, the NRC staff concludes that the proposed conforming Amendment 2 to SNM-960 (pursuant to 10 CFR 70.34 and 70.36) accurately reflects the approved license transfer and thus meets the requirements of 10 CFR Part 70. In addition, the staff determinations concerning conforming amendments to SNM-1270, to SNM-2500, and to the associated CoCs and QA programs are documented in separate correspondence.

VI. ENVIRONMENTAL REVIEW

In accordance with 10 CFR 51.22(c)(21), approvals of direct or indirect transfers of any license issued by the NRC and any associated amendments of licenses required to reflect the approval of a direct or indirect transfer of an NRC license are actions which belong to a category of actions which the Commission has declared to be a categorical exclusion. Therefore, in accordance with 10 CFR 51.22(b), neither an Environmental Assessment nor an Environmental Impact Statement is required for this action.

VII. CONCLUSION

The NRC staff has reviewed GE's application for approval of a direct transfer of certain materials licenses, as well as conforming amendments to related quality assurance program approvals and COC. The NRC has concluded that the transfer of the licenses, approvals, and certificates is in accordance with the provisions of the Act and with the Commission's regulations, and hereby finds that approval of the requested transfers is not inimical to the common defense and security, and does not constitute an unreasonable risk to the health and safety of the public.

VI. PRINCIPAL CONTRIBUTORS

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