

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

APPLICATION FOR THE INDIRECT TRANSFER OF CONTROL

1.7303% INTEREST IN THE LICENSE FOR

MILLSTONE POWER STATION, UNIT 3; DOCKET NO. 50-423

FROM CENTRAL VERMONT PUBLIC SERVICE CORPORATION

TO GAZ MÉTRO LIMITED PARTNERSHIP

**1.0     INTRODUCTION**

By application dated September 9, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11256A051), as supplemented by letters dated November 4, 2011 (ML11311A148), April 6, 2012 (ML12100A017), and May 4, 2012 (ML12128A433), (collectively, "the application"), Central Vermont Public Service Corporation (CVPS) and Gaz Métro Limited Partnership (Gaz Métro) requested that the U.S. Nuclear Regulatory Commission (NRC) consent, pursuant to Title 10 of the *Code of Federal Regulation* (10 CFR), Section 50.80, to the indirect transfer of control of CVPS' 1.7303% interest in the license for Millstone Power Station, Unit 3 (MPS 3), resulting from the acquisition of CVPS by Gaz Métro.

The application also requests that the NRC conduct a threshold determination to determine whether the proposed transfer of CVPS' interests in Maine Yankee Atomic Power Company, Connecticut Yankee Atomic Power Company, and Yankee Atomic Electric Company to Gaz Métro would constitute a direct or indirect transfer of the licenses that would require NRC approval pursuant to 10 CFR 50.80. That matter will be reviewed in a separate safety evaluation.

The letters of November 4, 2011, April 6, 2012, and May 4, 2012 contained clarifying information and did not expand the scope of the original *Federal Register* notice of February 27, 2012 (77 FR 11596).

**2.0     BACKGROUND**

The application states that on July 11, 2011, CVPS, Gaz Métro, and Danaus Vermont Corp., an independent wholly owned subsidiary of Gaz Métro formed as a merger subsidiary, entered into an Agreement and Plan of Merger. The merger agreement provides that Danaus Vermont Corp. will merge with and into CVPS, with CVPS continuing as the surviving corporation and an indirect wholly owned subsidiary of Gaz Métro. As a result of the transaction, CVPS will

become a direct subsidiary of Northern New England Energy Corporation, a Gaz Métro subsidiary and holding company organized and existing under the laws of the State of Vermont and formed to own Gaz Métro's energy company investments in the United States.

According to the application, CVPS is a Vermont corporation and the largest electric utility in Vermont. CVPS engages in the purchase, production, transmission, distribution and sale of electricity.

According to the application, Gaz Métro is a Canadian energy company and Quebec's leading natural gas distributor with over \$3.6 billion in assets. Gaz Métro has operated since 1957 and is an energy provider to its customers in Quebec and through its existing U.S. subsidiaries in Vermont. Gaz Métro is also involved in electricity distribution, natural gas transportation and storage, and the development of projects such as wind power.

The merger of Gaz Métro with CVPS will result in the indirect transfer of control of CVPS' 1.7303% interest in the license for MPS3. MPS3 is a 1227 MWe pressurized-water reactor, located approximately 3 miles WSW of New London, Connecticut in Waterford, Connecticut. The principal owner and operator of MPS3 is Dominion Nuclear Connecticut Inc., which owns 93.4707%. The remaining 4.7990% of the license is owned by Massachusetts Municipal Wholesale Electric Company.

### 3.0 REGULATORY EVALUATION

The applicant's request for approval of the indirect transfer of the license listed above and 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 or 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 gives its consent in writing.

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. Section 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 50.34 "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the applications were for an initial license." Section 50.80(c) states that:

[T]he Commission will approve an 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.

For indirect license transfers, the Commission has held, with respect to the first determination, that it will approve an application if the Commission determines that the proposed indirect transfer of control of the license will not affect the qualifications of the licensee to hold the license.

#### 4.0 FINANCIAL QUALIFICATION

The regulation at 10 CFR 50.33(f) provides that each application shall state the following:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

The regulation at 10 CFR 50.2, "Definitions," states, in part, 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.

Based upon information provided in the application, the staff finds that, according to the definition in 10 CFR 50.2, CVPS is a utility and will remain a utility after consummation of the proposed merger with Gaz Métro. As such, pursuant to 10 CFR 50.33(f), a review of financial qualifications is not warranted in this evaluation.

#### 5.0 DECOMMISSIONING FUNDING

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 application for an operating license for a utilization facility shall state information indicating how reasonable assurance will be provided and that funds will be available to decommission the facility.

The regulation at 10 CFR 50.75(b) requires the following:

Each power reactor applicant for or holder of an operating license...for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by § 50.33(k).

In accordance with 10 CFR 50.75(f)(1), CVPS reported information on the status of decommissioning funding for MPS3 as of December 31, 2010, to the NRC in the decommissioning funding status (DFS) report dated March 29, 2011 (ML110900375), and supplemented by letter dated June 14, 2011 (ML111810155). The NRC staff documented its review of the operating plants' DFS reports in SECY-11-0149, "Summary Findings Resulting from the Staff Review of the 2010 Decommissioning Funding Status Reports for Operating Power Reactor Licensees," dated October 26, 2011 (ML112620046).

According to the application and the DFS report for MPS3 dated March 29, 2011, CVPS' minimum financial assurance obligation as of December 31, 2010 was \$8.3 million, which represents its 1.7303% pro rata share of the total NRC minimum financial assurance amount, pursuant to 10 CFR 50.75(b) and (c), of \$482 million, CVPS also indicated that the value of its funds held in external decommissioning trusts as of December 31, 2010 was \$5.7 million.

The NRC staff verified the calculations provided by the applicant in the aforementioned DFS report for MPS3 as of December 31, 2010. Based on its review of the 2010 DFS report, the NRC staff determined that adequate decommissioning funding assurance was provided for MPS3 in accordance with NRC regulations.

Additionally, according to the application, the proposed transaction will not affect CVPS' current decommissioning funding arrangements, which requires it to be responsible for its pro rata share of the nuclear decommissioning funding assurance obligation for MPS3. CVPS will continue to provide financial assurance for the decommissioning of MPS3 in accordance with 10 CFR 50.75.

Based on the discussion above, the NRC staff concludes that CVPS has complied with the requirements of 10 CFR 50.75 with respect to providing decommissioning funding assurance for MPS3 and that the proposed merger will not affect its ability to provide decommissioning funding assurance in the future.

## 6.0 TECHNICAL QUALIFICATIONS

As stated in the application dated September 9, 2011, CVPS does not have any operating authority under the NRC operating license for MPS3. Accordingly, the technical qualifications of CVPS will not be reviewed in this safety evaluation. In any event, the transactions will have no impact on the operation, management, or control of any licensed facility, and no changes in any licensed activities have been proposed.

## 7.0 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 (1999). The application here postdates the issuance of the operating licenses for the units under consideration in this Safety Evaluation and, therefore, no antitrust review is required or authorized. The subject license does not contain any antitrust conditions. Therefore, there are no antitrust issues to be considered in connection with the conforming license amendments.

## 8.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Sections 103d and 104d of the AEA provide, in relevant part, that no license may be issued 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. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issue of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

The NRC's regulation at 10 CFR 50.38, "Ineligibility of certain applicants," is the regulatory provision that implements the statute. The NRC evaluated the application in a manner that is consistent with the guidance provided in the Standard Review Plan, "Foreign Ownership, Control, or Domination of Applicants for Reactor Licenses," dated June 1999, (hereafter referred

to as the “SRP on FOCD”), to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. (64 FR 52357-52359)

The NRC’s Position outlined in the SRP on FOCD states that “the foreign control prohibition should be given an orientation toward safeguarding the national defense and security.” Further, the SRP on FOCD outlines how the effects of foreign ownership may be mitigated through implementation of a “negation action plan” to ensure that any foreign interest is effectively denied control or domination over the licensee.

As previously stated, the proposed merger will result in Canadian limited partnership Gaz Métro, through a U.S. subsidiary, Northern New England Energy Corporation, holding a 100% ownership interest in CVPS. The applicant states that, because CVPS owns only a minority non-operational interest in MPS3, it is not expected that Gaz Métro, as an indirect foreign parent company of CVPS, will be able to exercise foreign control or domination within the meaning of the AEA and 10 CFR 50.38 over the subject license. However, in an abundance of caution, CVPS states that it is implementing, no later than the closing of the proposed merger, a Negation Action Plan (NAP) to ensure that any potential foreign control or domination is fully negated.

The application further states that the NAP is designed to assure continued U.S. control with respect to all matters related to CVPS’ nuclear ownership interests required to be under U.S. control by the AEA and NRC regulations. The NAP provides for the establishment of a Special Nuclear Committee (Committee) of the CVPS Board of Directors. The Committee will consist of three CVPS Board members who are U.S. citizens, with a majority of the Committee’s members being independent directors. The provisions of the NAP will be reflected in CVPS’ amended Bylaws, which will be submitted to the NRC when they become available.

The NRC staff reviewed the information provided in the application regarding FOCD matters, including the NAP and additional information provided in a letter dated April 6, 2012 (Accession No. ML12100A017). Based on this review and the implementation of the NAP as reviewed, the staff finds that the licensee will not be foreign owned, controlled, or dominated, if the following conditions are imposed:

- (a) The Operating Agreement provided to the NRC for review may not be modified in any respect concerning decision-making authority over “safety issues” as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (b) At least half the members of CVPS’ Board of Directors shall be U.S. citizens.
- (c) The Chief Executive Officer (CEO), Chief Nuclear Officer (CNO) and Chairman of the Board of Directors of CVPS shall be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure and shall ensure that the business and activities of CVPS with respect to the MPS3 license is at all times conducted in a manner consistent with the public health and safety and common defense and security of the United States.

(d) The CVPS Board of Directors will establish a Special Nuclear Committee (SNC) composed only of U.S. citizens, a majority of whom are not officers, directors, or employees of CVPS, Gaz Métro, or any other Gaz Métro subsidiaries. The SNC will report to the CVPS Board of Directors on a quarterly basis for informational purposes. The SNC will make available to the NRC for review these and any other reports regarding foreign ownership and control of nuclear operations.

#### 9.0 NUCLEAR INSURANCE & INDEMNITY

According to the application, the proposed indirect transfer of control of the license would not affect the existing Price-Anderson indemnity agreements and the required nuclear property damage insurance under 10 CFR 50.54(w) and nuclear energy liability insurance required under Section 1770 of the AEA and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

Also, the NRC has no reason to believe that the proposed merger will affect the ability of CVPS to meet its financial obligation for its pro rata share of obligations for retrospective premiums for MPS3.

Therefore, in consideration of the foregoing, the NRC concludes that the indirect transfer of control of the license held by CVPS for MPS3 will have no adverse impact on its ability to provide required nuclear insurance and indemnity coverage and its ability to meet its nuclear insurance obligations.

#### 10.0 CONCLUSION

In view of the foregoing, the NRC staff finds that the proposed merger between CVPS and Gaz Métro will not affect the qualifications of CVPS to hold the license for the MPS3 under review herein, and that the indirect transfer of the license to the extent held by CVPS is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions set forth above.

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