



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

APPLICATION FOR THE DIRECT TRANSFER OF
CENTRAL VERMONT PUBLIC SERVICE CORPORATION'S
INTEREST IN THE LICENSE FOR
MILLSTONE POWER STATION, UNIT 3; DOCKET NO. 50-423
TO GREEN MOUNTAIN POWER CORPORATION

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), May 4, 2012 (ML12128A433), June 26, 2012 (ML12180A123), and July 19, 2012 (ML12205A030), (collectively, the application), Central Vermont Public Service Corporation (CVPS) and Gaz Métro Limited Partnership (Gaz Métro), (collectively, the Applicants), 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 and direct transfers of control of CVPS's 1.7303% interest in the license for Millstone Power Station, Unit 3 (MPS 3), resulting from the acquisition of CVPS by Gaz Métro (first merger) and a subsequent restructuring of Gaz Métro in which CVPS will be consolidated with Gaz Métro's existing U.S. subsidiary Green Mountain Power Corporation (GMP), respectively. The NRC consented to the first merger by letter and Order dated June 15, 2012 (ML121300466). This safety evaluation relates to the second merger only.

MPS3 is a 1227 MWe pressurized-water reactor, located approximately 3 miles west-southwest of New London, CT in Waterford, CT. The principal owner and operator of MPS3 is Dominion Nuclear Connecticut, Inc., which owns 93.4707%. Massachusetts Municipal Wholesale Electric Company owns the remaining 4.7990% of the license. They are not involved in this transfer.

2.0 BACKGROUND

On September 9, 2011, CVPS and Gaz Métro submitted an application requesting NRC consent, pursuant to 10 CFR 50.80, to two related proposed license transfers: (1) the indirect transfer of control of CVPS's 1.7303% interest in the license for MPS3 resulting from the acquisition of CVPS by Gaz Métro (first merger); and (2) the direct transfer of control of CVPS's interest in the license for MPS3 resulting from a subsequent restructuring in which CVPS will be consolidated with Gaz Métro's existing U.S. subsidiary GMP (second merger).

As part of the acceptance review process for the application, the NRC informed the applicants that it would review the first merger, but defer its review of the second merger until additional necessary documentation was provided by the applicants. By Order dated June 15, 2012, the NRC approved the indirect license transfer resulting from the first merger (ML121300466). On June 26, 2012, the applicants provided the necessary supplemental information to the NRC to complete the review of the proposed direct transfer.

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, in turn, is owned by Valener Inc., a publicly owned entity, Gaz Métro Inc., and Gaz Metro Plus Inc., a wholly owned subsidiary of Gaz Métro Inc. Gaz Métro Inc., in turn, is owned by Noverco Inc. Noverco Inc., in turn, is owned by Trencap L.P. and IPL System Inc. Trencap L.P., in turn, is owned by Caisse de dépôt et placement du Québec and Capital d'Amérique CDPZ Inc. IPL System is owned by Enbridge Inc. CVPS is a Vermont corporation and the largest electric utility in Vermont. CVPS engages in the purchase, production, transmission, distribution, and sale of electricity and is the holder of a 1.7303% interest in MPS3. In the first merger, CVPS became a wholly owned subsidiary of Gaz Métro.

The second merger will result from a restructuring of Gaz Métro where CVPS will merge with and into GMP, a Vermont corporation and a regulated electric utility that transmits, distributes, and sells electricity and utility construction services in Vermont. Green Mountain Power will be the surviving corporation. The merger will result in the direct transfer of control of the MPS3 operating license, to the extent held by CVPS (1.7303%), to GMP. All obligations and duties of CVPS will become the obligations and duties of GMP and GMP will succeed to all of CVPS's financial obligations regarding decommissioning, operation, and maintenance.

3.0 REGULATORY EVALUATION

The applicant's request for approval of the direct transfer of the license listed above and discussed in this safety evaluation (SE) 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 10 CFR 50.80(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, "Contents of Applications; General Information," and 10 CFR 50.34, "Contents of Applications; Technical Information," 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.

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 describe in § 50.21(b) or § 50.22, [an application shall state] 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 the following:

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, GMP will be a utility after consummation of the proposed merger of CVPS and GMP. 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 that funds will be available to decommission the facility.

The regulation in 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), on March 29, 2011, 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 (ADAMS Accession No. ML110900375), supplemented by a letter dated June 14, 2011 (ADAMS Accession No. 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 (ADAMS Accession No. ML112620046).

According to the application and the DFS report for MPS3, dated March 29, 2011, CVPS's 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 10 CFR 50.75(c), of \$482 million (total minimum amount for MSP3). 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 that the applicant provided 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's current decommissioning funding arrangements. As a 1.7303% co-owner of MPS3, CVPS is responsible for its share of the nuclear decommissioning funding assurance obligation for MPS3. According to Section 3.2 of the second merger agreement, all obligations and duties of CVPS shall attach to GMP as a result of the second merger. GMP will, thus, assume responsibility for CVPS's current financial obligation with respect to payment of its proportionate share of the decommissioning funding assurance obligations for MPS3. GMP will continue to provide financial assurance for the decommissioning of MPS3 in accordance with 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning."

Based on the discussion above, the NRC staff concludes that CVPS has complied with the requirements of 10 CFR 50.75 to provide decommissioning funding assurance for MPS3 and that, following the proposed merger, GMP's ability to provide decommissioning funding assurance for MPS3 in the future will not be affected.

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 (SE). 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 (see also *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 (SE) 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 the following:

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 in 10 CFR 50.38, "Ineligibility of Certain Applicants," is the regulatory provision that implements the statute. The NRC evaluated the application 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 on FOCD, outlined in the SRP, 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, Canadian limited partnership Gaz Métro, through a U.S. subsidiary, Northern New England Energy Corporation, holds a 100% ownership interest in both CVPS and GMP. As a result of the second merger, Gaz Métro will continue to hold a 100% interest in the combined company. The application states that, because GMP will own only a minority nonoperational interest in MPS3, it is not expected that Gaz Métro, as an indirect foreign parent company of GMP, 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, the applicants have included in the bylaws of the combined company the Negation Action Plan (NAP) that the NRC approved in its June 15, 2012, Order for the first merger.

The application further states that the NAP is designed to assure continued U.S. control on all matters related to the combined company's nuclear ownership interests as required under the AEA and NRC regulations. The NAP provides for the establishment of a special nuclear committee (SNC) of the GMP board of directors. The SNC will consist of three GMP Board members who are U.S. citizens, with a majority of the SNC's members being independent directors. The provisions of the NAP are reflected in the amended and restated bylaws of GMP (Bylaws), which were submitted to the NRC in the letter dated July 19, 2012 (ADAMS Accession No. ML12205A030).

Furthermore, in the July 19, 2012, letter, the applicants identified items they believed were inadvertently included in the NRC's Order, dated June 15, 2012, approving the first merger:

- (1) Condition 3 of the June 15, 2012, Order provides that "[t]he Chief Executive Officer (CEO), Chief Nuclear Officer (CNO), and Chairman of the Board of Directors of CVPS shall be U.S. citizens." The Applicants state that the Chairman of the Board and the CEO for CVPS following the First Merger are U.S. citizens. However, as a non-operating co-owner of MPS3, CVPS does not have a CNO. Further, the Applicants state that they had indicated in a May 4, 2012, supplement that Mr. Tessier, a Canadian citizen, would be Chairman of the Board of CVPS following the First Merger. The Applicants

further state that with a SNC established to prevent foreign control, they had not proposed to limit the office of Chairman to a U.S citizen. The Applicants request that the NRC amend Condition 3 of the June 15, 2012, Order by: (1) removing CNO from the list of positions requiring U.S. citizenship, due to inapplicability, and (2) removing the citizenship limitation on the Chairman, in view of the existence of the SNC.

The NRC has evaluated this request and submits the following:

With respect to the CNO position, the citizenship requirement was knowingly maintained in the Condition. The staff was forward-thinking in its review of the First Merger and implemented a Condition that, while in part not presently applicable, could be warranted in the future should CVPS's business position change within the MPS3 co-ownership agreement and a CNO position formed.

After reviewing the Applicants' request, the NRC agrees to amend Condition 3 of the June 15, 2012, Order by removing the CNO position from the list with the understanding that, should the CNO position be introduced in the GMP executive structure, GMP is required to amend the GMP Bylaws and NAP accordingly, which requires NRC notification and approval pursuant to Condition 1 of the Order.

With respect to the position of Chairman, the NRC maintains that the negation of foreign ownership, control, and domination, at all levels, is essential in preserving the safety and security of U.S. nuclear interests, thus the citizenship requirement was knowingly maintained at the Chairman level. After reviewing the Applicants' request to amend the citizenship requirement for Chairman, performing an open-source analysis of the proposed Chairman, Mr. Tessier, and given the proposed 1.7303% ownership interest involved and the non-operating status of GMP, the NRC agrees to amend Condition 3 of the June 15, 2012, Order by removing the citizenship limitation on the Chairman of the Board.

- (2) Condition 4 of the June 15, 2012, Order addressing the SNC states that the SNC will be "composed of U.S. citizens, a majority of whom are not officers, directors, or employees of CVPS, Gaz Métro, or any Gaz Métro subsidiaries." This condition is intended to reflect the Applicants' proposal that a majority of the SNC would be independent directors of CVPS, meaning that those directors are not officers or employees of CVPS, Gaz Métro, or its subsidiaries. The word "directors" was included in Condition 4, which is contradictory to Condition 1 which maintains that the SNC "will consist of three Board members who are U.S. citizens. The Applicants have implemented the SNC provisions of the NAP as delineated in the (SE) of the proposed First Merger. The Applicants request that the NRC amend Condition 4 of the June 15, 2012, Order by removing the word "directors" to eliminate confusion.

The NRC has evaluated this request and agrees to amend Condition 4 of the NAP for the Second Merger accordingly.

The NRC Staff reviewed the information provided in the application regarding FOCD matters, including the NAP and additional information provided in letters dated April 6, 2012 (ADAMS Accession No. ML12100A017), May 4, 2012 (ADAMS Accession No. ML12128A433), June 26, 2012 (ADAMS Accession No. ML12180A123), and July 19, 2012 (ADAMS Accession No. ML12205A030). 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 Negation Action Plan 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 GMP's Board of Directors shall be U.S. citizens.
- (c) The Chief Executive Officer (CEO) of GMP shall be a U.S. citizen. This individual shall have the responsibility and exclusive authority to ensure and shall ensure that the business and activities of GMP 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 GMP Board of Directors will establish a Special Nuclear Committee (SNC) composed solely of U.S. citizens, a majority of who are not officers or employees of GMP, Gaz Métro, or any other Gaz Métro subsidiaries. The SNC will report to the GMP 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 AND INDEMNITY

According to the application, the proposed direct 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 170 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 GMP to assume and meet CVPS's 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 direct transfer of control of 1.7303% of the license held by CVPS to GMP for MPS3 will have no adverse impact on the ability to provide required nuclear insurance and indemnity coverage and the ability to meet nuclear insurance obligations.

10.0 CONFORMING AMENDMENT

10.1 Introduction

As previously stated, the application requests approval of a conforming license amendment for administrative purposes to reflect the change of name for the co-owner licensee on the MSP3 license from "Central Vermont Public Service Corporation" to "Green Mountain Power Corporation."

10.2 Discussion

The proposed changes to the operating modify the license to reflect the approved license transfer actions, which are subject to certain conditions set forth in the Orders approving the transfer, and that were identified and discussed earlier in this SE. The amendment involves no safety questions and are administrative in nature. Accordingly, the proposed amendment is acceptable.

10.3 State Consultation

In accordance with the Commission's regulations, the State official from Connecticut was notified of the proposed issuance of the amendment. The State official had no comments.

10.4 Conclusions with Respect to the Conforming Amendments

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner; (2) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations; and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

11.0 ENVIRONMENTAL CONSIDERATIONS

The subject application is for approval of the transfer of license issued by the NRC and approval of conforming amendment. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

12.0 CONCLUSION

In view of the foregoing, the NRC staff finds that GMP is qualified to be a holder of the license for the unit reviewed herein, 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, subject to the conditions set forth above.

Principal Contributor: Shawn Harwell

Date: September 21, 2012