

7590-01-P

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of)
ILLINOIS POWER COMPANY) Docket No. 50-461
(Clinton Power Station))

ORDER APPROVING TRANSFER OF LICENSE
AND CONFORMING AMENDMENT

I.

Illinois Power Company (IP or the licensee) is the holder of Facility Operating License No. NPF-62, which authorizes operation of the Clinton Power Station (CPS or the facility) at steady-state power levels not in excess of 2894 megawatts thermal. The facility is located at the licensee's site in DeWitt County, Illinois. The license authorizes IP to maintain and operate the facility.

II.

Under cover of a letter dated July 23, 1999, IP and AmerGen Energy Company, LLC, jointly submitted an application requesting approval of the proposed transfer of the CPS facility operating license to AmerGen Energy Company, LLC. The licensee and AmerGen also jointly submitted an application for a conforming amendment to reflect the transfer. Supplemental information was provided under cover of letters dated July 30, August 9, August 20, October 7, and October 11, 1999. Hereinafter, the July 23, 1999, license transfer application and supplemental information will be referred to collectively as the "application."

AmerGen is a limited liability company that was formed to acquire and operate nuclear power plants in the United States. PECO Energy Company (PECO) and British Energy, Inc.,

each own a 50-percent interest in AmerGen. British Energy, Inc., is a wholly-owned subsidiary of British Energy, plc. After completion of the proposed transfer, AmerGen would be the sole owner and operator of CPS. The conforming amendment would remove the current licensee and the antitrust license conditions, applicable to IP, from the facility operating license and would add AmerGen in place of IP.

Approval of the transfer of the facility operating license and the conforming license amendment was requested by IP and AmerGen pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the Federal Register on August 19, 1999 (64 FR 45290). The Commission received one set of comments dated September 20 and November 2, 1999, from The Environmental Law and Policy Center of the Midwest and forwarded those comments to the NRC staff for its consideration, and also to IP and AmerGen. The comments contained in those letters are addressed in the staff's safety evaluation dated November 24, 1999.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by IP and AmerGen, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that AmerGen is qualified to hold the license and that the transfer of the license to AmerGen is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that

the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated November 24, 1999.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the license as described herein to AmerGen is approved, subject to the following conditions:

- (1) The AmerGen Limited Liability Company Agreement dated August 18, 1997, and any subsequent amendments thereto as of the date of this Order, may not be modified in any material respect concerning decision-making authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (2) At least half of the members of AmerGen's Management Committee shall be appointed by a nonforeign member group, all of which appointees shall be U.S. citizens.
- (3) The Chief Executive Officer (CEO), Chief Nuclear Officer (CNO) (if someone other than the CEO), and Chairman of the Management Committee of AmerGen 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 AmerGen with respect to

the CPS license are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States.

- (4) AmerGen shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of PECO stock.
- (5) AmerGen is required to provide decommissioning funding assurance of no less than \$210 million, after payment of any taxes, that will be deposited in the decommissioning trust fund for CPS at the time of CPS's transfer to AmerGen.
- (6) The decommissioning trust agreement for CPS must be in a form acceptable to the NRC.
- (7) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, British Energy, Inc., AmerGen, or affiliates thereof, or their successors or assigns shall be prohibited. Except for investments tied to market indexes or other nonnuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.
- (8) The decommissioning trust agreement for CPS must provide that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.
- (9) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

- (10) The appropriate section of the decommissioning trust agreement shall reflect that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.
- (11) AmerGen shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Clinton license and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.
- (12) AmerGen shall take no action to cause PECO or British Energy, Inc., to void, cancel, or diminish the \$110 million contingency commitment from PECO and British Energy, plc, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen's ability to draw upon the commitment. Also, AmerGen shall inform the NRC in writing at any time that it draws upon the \$110 million commitment.
- (13) AmerGen shall, prior to the completion of the sale and transfer of CPS to it, provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that AmerGen has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.
- (14) After receipt of all required regulatory approvals of the transfer of CPS, IP and AmerGen shall inform the Director, Office of Nuclear Regulation, in writing of such receipt within five business days, and of the date of the closing of the sale and transfer of CPS no later than seven business days prior to the date of closing. Should the transfer of the license not be completed by December 31, 2000, this Order shall become null and void, provided, however, on written application and for good cause shown, such date may in writing be extended.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 23, 1999, and supplemental submittals dated July 30, August 9, August 20, October 7, and October 11, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 24th day of November 1999.

FOR THE NUCLEAR REGULATORY COMMISSION



Brian W. Sherron, Acting Director
Office of Nuclear Reactor Regulation