



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED MERGER OF NEW ENGLAND ELECTRIC SYSTEM AND

THE NATIONAL GRID GROUP PLC

SEABROOK STATION, UNIT 1

DOCKET NO. 50-443

1.0 INTRODUCTION

By application dated March 15, 1999, New England Power Company (NEP) requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of Facility Operating License No. NPF-86 for the Seabrook Station, Unit 1 (Seabrook), to the extent held by NEP in regard to NEP's 9.9-percent ownership interest in Seabrook. The indirect transfer would result from a merger involving the parent company of NEP and The National Grid Group plc (National Grid), which also joined in submitting the application. The other 10 owners of Seabrook have ownership interests ranging from less than 1 percent up to 35.9 percent. North Atlantic Energy Service Corporation (NAESC) is the licensed entity responsible for operating Seabrook. Supplemental information was filed on May 20, 1999, which did not expand the scope of the application as originally noticed in the *Federal Register*.

The NRC staff reviewed the initial application and determined that additional information was needed to complete the review. A request for additional information (RAI) pertaining to foreign ownership and control issues was sent to counsel for the applicants on June 15, 1999, and they responded with supplemental information dated June 17, 1999 (referred to as "supplement"). The supplement did not expand the scope of the application as originally noticed in the *Federal Register*.

The application also requested that the NRC consent to the indirect transfer of the license for the Millstone Nuclear Power Station, Unit 3 (Millstone 3), in connection with NEP's 12.2-percent ownership interest in Millstone 3, and that request is being addressed in a separate, related safety evaluation (SE).

NEP's parent company is the New England Electric System (NEES), a Massachusetts business trust. NEP is incorporated in the Commonwealth of Massachusetts. NEES owns all of NEP's common stock and 99.71 percent of its voting securities, with the other 0.29 percent being owned by the public in the form of preferred stock with common voting rights. The requested transfer approval relates to a proposed merger in which NEES is to be acquired by National Grid, a British company. NEES and National Grid entered into a merger agreement on December 11, 1998.

United States Nuclear Regulatory Commission Official Hearing Exhibit	
In the Matter of: NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project Units 3 and 4)	
	ASLBP #: 09-885-08-COL-BD01
	Docket #: 05200012   05200013
	Exhibit #: STP000088-00-BD01
	Admitted: 1/6/2014
	Rejected:
Other:	Identified: 1/6/2014
	Withdrawn:
	Stricken:

## 5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

### 5.1 Background

Section 103d of the AEA prohibits the Commission from issuing a license for a nuclear power plant under Section 103 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 Commission's regulations at 10 CFR 50.38 contain virtually identical language to implement this prohibition.

The issue addressed in this section is whether, in the NRC staff's view, the merger of NEES and National Grid will cause NEP to be owned, controlled, or dominated by foreign interests such that the foreign ownership and control prohibition of the AEA would be violated.

The Commission has approved the Final Standard Review Plan on Foreign Ownership, Control, or Domination (referred to herein as "SRP") to document the process that the staff uses to analyze whether an applicant is owned, controlled, or dominated by foreign interests within the meaning of Section 103d. The staff has used this SRP as guidance for evaluating the foreign ownership considerations of the proposed merger of NEES and National Grid.

### 5.2 Organization of NGG Holdings and NEES Holdings, Inc.

National Grid has created NGG Holdings as a U.S. limited liability company organized in the Commonwealth of Massachusetts. It is an indirectly wholly owned subsidiary of National Grid that will be merged with and into NEES, with NEES being the surviving entity from that merger. The supplement states that, following the merger, five additional companies will be created as intermediates between National Grid and NEES, all of which will only be under the control of National Grid and either directly or indirectly wholly owned by National Grid. Following the merger, NEES will be converted into NEES Holdings, Inc., a Massachusetts corporation described in Section 1.0 of this SE.

The five additional companies and their places of incorporation will be as follows: National Grid (US) Holdings Limited, incorporated in England; National Grid (US) Investments, incorporated in England; National Grid (Ireland) 1 Limited, incorporated in Ireland; National Grid (Ireland) 2 Limited, incorporated in Ireland; and National Grid General partnership, incorporated in Delaware. The names and identities of the officers and directors of these five intermediate companies had not been determined as of the date of the supplement (June 17, 1999) but all the officers and directors are to be citizens of the United States, the United Kingdom, or a member state of the European Union.

### 5.3 Information Provided and Measures Proposed to Address Foreign Control Concerns

Pursuant to Sections 4.1 and 4.2 of the SRP, the staff performed threshold and supplementary reviews of the nature and extent of National Grid's proposed ownership, control, or domination of NEP. Based upon information contained in the application and in the supplement, the staff concluded that there will be interlocking directors among the boards of National Grid, NEES Holdings, Inc., and NEP, and that National Grid is a public limited company owned by a diverse

group of stockholders, many of which the staff would presume to be citizens of various foreign nations. Under Section 4.3 of the SRP, the staff is to determine the type of actions, if any, that would be necessary to negate the effects of whatever foreign ownership, control, or domination would otherwise exist to a level consistent with the AEA and NRC regulations. NEP has provided the information required by 10 CFR 50.33(d), as well as additional information in its application and the supplement, on which the staff concludes that NEP and National Grid have taken, or have committed to take, adequate mitigating steps to ensure that NEP will not be owned, controlled, or dominated by an alien, foreign corporation, or foreign government for the purposes of the AEA and the NRC's regulations, notwithstanding National Grid's proposed "ownership" of NEP in the ordinary sense. The rest of Section 5.3 of this SE provides detailed information about the measures proposed to negate foreign control over NEP with respect to its minority ownership interest in Seabrook.

Even though NEP will become an indirect subsidiary of National Grid, the negation plan set forth in the application is designed to prevent the direct or indirect transfer of control to National Grid or foreign persons over NEP's nuclear activities regarding Seabrook. The plan's focus is on the establishment of a Special Nuclear Committee (also referred to herein as "Nuclear Committee" or "Committee") of the NEP Board of Directors, as set forth in the amended Bylaws of NEP. The Committee will consist of at least three NEP Board members who are U.S. citizens elected to the Committee by the full NEP Board, with a majority of the Committee's members being Independent Directors, as defined later in this section. After reviewing the stated purpose and the design of the Committee, the NRC staff has concluded that it has been effectively designed to have primary authority over nuclear issues of NEP such that foreign interests will not be able to control NEP within the meaning of the AEA and NRC regulations. The remainder of this section describes the key features of the Committee which led the staff to reach this conclusion.

The Nuclear Committee will report to the NEP Board of Directors on a quarterly basis, but for informational purposes only. As described in Section 7 of the amended Bylaws, the Nuclear Committee will have sole discretion to act on behalf of NEP in all matters related to the operation, maintenance, contribution of capital, decommissioning, fuel cycle, and other matters relating to Seabrook and the other nuclear facilities in which NEP has an interest. The application stated, however, that there will be three exceptions to these matters in which the full NEP Board of Directors<sup>3</sup> shall be authorized to act on behalf of NEP, after consultation with the Nuclear Committee. These are as follows:

- (1) The right to vote as to whether or not to close a facility and to begin its decommissioning, and as to whether to seek relicensing.
- (2) The right to decide to sell, lease, or otherwise dispose of NEP's interest in a facility.

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<sup>3</sup>The supplement listed one U.K. and seven U.S. directors for the initial composition of the post-merger NEP board; four U.K. and five U.S. directors for the post-merger NEES board; and six U.K. directors, three U.S. directors, and one Dutch director for the post-merger National Grid board. However, in response to concerns raised by intervenors, NEP has committed that, following the proposed merger, all of NEP's Board of Directors and corporate officers will be U.S. citizens as long as NEP remains a licensee of Millstone 3 and Seabrook.

- (3) The right to take any action which is ordered by the NRC or any other agency or court of competent jurisdiction.

NEP states that these three exceptions are rights essential to the protection of the economic and legal interests of National Grid and that is the reason for allowing the full Board to decide them. NEP argues that even with these exceptions, the possibility of foreign influence over these three types of decisions being detrimental to the national interest is eliminated because all decisions reserved to the full NEP Board are limited in a very restrictive way as described in the amended Bylaws and ultimately will be subject to review and approval by the NRC and by other U.S. regulatory and/or judicial entities before they can be implemented.

The intervenors raised concerns on the other hand that the extent of rights retained by the full NEP Board may have an impact on the effectiveness of the negation action plan. NEP responded to these concerns by: (1) stating that it will require that all NEP Board members and corporate officers must be U.S. citizens as long as NEP remains a licensee of Millstone 3 or Seabrook; and (2) clarifying to the intervenors' satisfaction the instances in which decisions related to Millstone 3 and Seabrook are reserved to the full NEP Board.

Specifically, NEP stated that with respect to exception (1) above, a decision to either decommission or restart is limited only to situations in which significant costs are involved and a fundamental business decision is required by the full NEP Board. Once the joint owners of a nuclear unit have made any such decision to decommission or restart in accordance with the joint ownership agreements, the decision-making process then will reside with the NEP Nuclear Committee to provide NEP's inputs to the joint owners regarding the details of implementing such decisions. With respect to exception (2) above, NEP stated that this decision also is a fundamental business decision that is governed by the joint ownership agreements, and any disposition of NEP's interest in a nuclear unit would require NRC approval. With respect to exception (3) above, NEP assured the intervenors that its reservation to the full NEP Board of the right to make decisions concerning compliance with legal or regulatory authority was not intended to do anything but precisely what government authorities required. NEP agreed, as part of reaching a settlement with the intervenors, to eliminate this third right for the full Board.

The intervenors stated in the joint November 4, 1999, pleading filed with the Commission that, as a result of NEP's clarifications regarding exceptions (1) and (2) and the elimination of exception (3) as no longer being reserved to the full NEP Board, they are satisfied that NEP can comply with NRC's requirements concerning foreign ownership, control, or domination in relation to Millstone 3 and Seabrook.

The staff has noted that NEP has taken steps to avoid any indirect foreign influences that might affect the Nuclear Committee. Section 1 of Article IV-A of the amended NEP Bylaws requires that a majority of Committee members at all times be made up of Independent Directors, which are directors who are not current or past employees of NEP or any affiliated companies, including National Grid and its subsidiaries. The application states that this will be done so the Independent Directors cannot be influenced by NEP or National Grid through an employment relationship or in any other manner. Section 2 of that same Article specifies that each Committee member will be appointed to a fixed term and may be removed during that term only for specific causes. This step is designed to prevent foreign citizens from threatening to

remove a member. Any member leaving the Committee can only be replaced by a U.S. citizen. Section 10 of the amended Bylaws states that any member of the Committee is both empowered and required to report to the NRC any action by a foreign citizen which the member believes is designed to unduly influence his or her behavior to the detriment of the national interest. Finally, NEP will extend to each Committee member the protection afforded by the NRC's regulations contained in 10 CFR 50.7 (presumably if the protection would not already exist by operation of law), which prevent any licensee from discriminating against any employee for engaging in a "protected activity," such as informing government agencies as to possible non-compliance with the terms of a license or statute.

As the SRP indicates, the Commission will give the foreign control prohibition an orientation to the common defense and security. NEP's 9.9-percent minority ownership interest in Seabrook does not give NEP any rights to control the operation of the facility, nor to have access to, or possession of, any Special Nuclear Material (SNM) or Restricted Data. Furthermore, the application states that there is no Restricted Data involved in the Seabrook design, technology, or operation. (Seabrook is a Westinghouse pressurized water reactor, using commonly available technology.) Also, although there is SNM contained in the fresh and spent fuel, it is not in the form of weapon-sensitive materials. Even if weapon-sensitive materials were involved, the logistics and clearances required for a foreign citizen to obtain access to such material would seem to make such access infeasible. In light of the foregoing, there is a reasonable basis to conclude that there will be no threat to the common defense and security given NEP's inability to control operation of the facility or to have access to SNM or Restricted Data.

#### 5.4 Staff Conclusions with Respect to Foreign Ownership and Control Considerations

The staff has considered guidance contained in the SRP and detailed information from the applicant with respect to foreign ownership, control, and domination. The staff has placed substantial weight on the significant safeguards built into the design of the NEP negotiation plan, as stated in the application. The staff regards the safeguards provided in NEP's application as adequate protection to prevent NEP from being in violation of the foreign control prohibition contained in Section 103d. The additional safeguards that were agreed to by NEP and the intervenors, requiring that all NEP Board members and officers must be U.S. citizens as long as NEP is a licensee for Millstone 3 or Seabrook, and requiring decisions to comply with agency and court orders to be made only by the Committee, provide protection above and beyond this initial NEP negotiation plan. This additional protection is not inconsistent with the AEA and the Commission's regulations, and therefore, the staff would not object to such additional protection.

In consideration of all the foregoing, the staff concludes that the indirect transfer of control of NEP's 9.9-percent minority ownership interest in the operating license for Seabrook to National Grid would not violate the prohibitions in the AEA pertaining to foreign ownership, control, or domination, provided that NEP is subject to the following conditions. The staff believes that these conditions are consistent with Commission precedent.

1. No later than the time the proposed merger with National Grid is consummated, NEP shall establish and make operational a Special Nuclear Committee, as described in the

application, having the composition, authority, responsibilities, and obligations specified in the application, provided, however, the Special Nuclear Committee may also have exclusive authority on behalf of NEP over taking any action which is ordered by the NRC or any other agency or court of competent jurisdiction. No material changes with respect to the Special Nuclear Committee may be made without the prior written consent of the Director, Office of Nuclear Reactor Regulation. The foregoing provisions may be modified by the Commission upon application and for good cause shown.

2. The Special Nuclear Committee shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of NEP with respect to the Seabrook 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.

## 6.0 CONCLUSIONS

In view of the foregoing discussion, the staff concludes that the proposed indirect transfer of the operating license for Seabrook to National Grid with respect to NEP's 9.9-percent ownership interest in Seabrook will not contravene the prohibition against foreign ownership, control, or domination with the imposition of the conditions described in this Safety Evaluation. Also, the staff finds that the proposed merger will not adversely impact either the technical qualifications of the Seabrook management and staff, or the financial qualifications of NEP with respect to its ongoing provision of its share of funds for the operation and eventual decommissioning of Seabrook. Accordingly, the staff concludes that NEP will remain qualified to hold the license with respect to its 9.9-percent ownership interest in Seabrook following the proposed merger of NEES and National Grid, and that the indirect transfer of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions set forth herein.

Principal Contributor: A. McKeigney

Date: December 10, 1999