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

OFFICE OF THE
SECRETARY

September 22, 1999

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Re: Illinois Power Company
Clinton Power Station
Docket No. 50-461

Gentlemen:

Enclosed is a comment on the proposed license transfer for the Clinton Power Station. The comment was submitted to the Nuclear Regulatory Commission by the Environmental Law & Policy Center. In accordance with the requirements of 10 C.F.R. §1305(c), this letter constitutes service of the comment on your respective clients, Illinois Power Company and AmerGen Energy Company.

Sincerely,

Emile L. Julian

Emile L. Julian
Assistant for Rulemakings
And Adjudications

Enclosure: As stated

cc w/o enclosure: Daniel W. Rosenblum, Esquire

20857

ENVIRONMENTAL LAW & POLICY CENTER
ILLINOIS INDIANA MICHIGAN MINNESOTA OHIO WISCONSIN

September 20, 1999

Annette Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Rulemakings and Adjudications Staff

Re: Illinois Power Company; Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment and Opportunity for Hearing - 64 Fed. Reg. 45290 (August 19, 1999)

Dear Secretary Vietti Cook:

Illinois Power Company's (IP) application for approval of the transfer of the Clinton Power Station (Clinton) license to AmerGen Energy Company (AmerGen) raises fundamental questions about the structure and safety of the nuclear power industry in a competitive environment. The NRC will determine, in this case, whether the American public should be forced to bear the risk of a consolidated nuclear power industry in which undercapitalized limited liability corporations are entrusted with the enormous responsibility of operating and, eventually, decommissioning a significant portion of this country's nuclear generation plants.

The Environmental Law and Policy Center of the Midwest (ELPC)[1] respectfully requests that the NRC reject the proposed license transfer and that it unequivocally state that the public's interest in a safe nuclear power industry will not be subordinated to the industry's interest in maximizing profit by limiting potential liability. The proposed license transfer must be rejected because:

(1) AmerGen has not satisfied the requirement of 10 CFR §50.33(f)(2) that it possesses, or has reasonable assurance of obtaining, the funds necessary to cover the estimated operating costs of Clinton. Specifically, AmerGen has not demonstrated that it has access to sufficient funds to cover the operating costs, or the costs of safe and orderly shutdowns, at Clinton **and** the other nuclear plants it intends to own and operate in the event of multiple extended outages at those plants.

(2) AmerGen will be unable to satisfy the requirement of 10 CFR §50.75 that it have sufficient funds to decommission Clinton. Specifically, AmerGen has not demonstrated that it will have sufficient funds to decommission Clinton if decommissioning is required before the end of Clinton's anticipated life and it has not demonstrated how it will funds the cost of maintaining its spent nuclear fuel until the Department of Energy takes control.

If AmerGen wants the opportunity to make a profit on Clinton, as well as Three Mile Island and other plants that it is in the process of purchasing at rock bottom prices, it must commit the money necessary to ensure that the plants are operated and

[1] ELPC is a Chicago-based regional public interest organization working to reduce threats to environmental quality and public health by promoting sustainable energy resources.

decommissioned safely. AmerGen must be required to ensure that sufficient funds are available to maintain and operate all of the plants it owns, even if most of them are shut down for a significant period of time. AmerGen must be required to ensure that sufficient money is available for decommissioning of the plants if its decommissioning funds are inadequate. AmerGen has not yet made the commitments necessary to protect the public.

ELPC requests that the NRC reject the license transfer application unless AmerGen: (1) provides reasonable assurance that it can obtain the funds necessary to cover the estimated operating costs, including the costs of orderly shutdown, of Clinton and the other nuclear plants it intends to own and operate; and (2) provides reasonable assurance that it can obtain the funds necessary to decommission Clinton, including decommissioning before the end of Clinton's anticipated life and the costs of maintaining Clinton's spent nuclear fuel until the Department of Energy takes control of that fuel.

AmerGen Has Not Demonstrated that It Possesses, or Has Reasonable Assurance of Obtaining, the Funds Necessary to Cover Estimated Operating Costs

AmerGen has apparently prepared a Projected Income Statement for the period January 2000 through December 2004 that indicates that its operating revenues will cover its operating costs. "Apparently", since all of essential information in the Projected Income Statement has been redacted from the version that is made available to the public as Enclosure 6. The Projected Income Statement apparently relies on the income from Clinton capacity sales and energy sales which will come from IP pursuant to the Power Purchase Agreement. To state the obvious, the Power Purchase Agreement provides no basis for assuming that operating revenues will cover AmerGen's operating costs after the expiration of the agreement

Even if AmerGen is able to cover its operating costs with operating revenues when Clinton is operating, it has not demonstrated that it will be able to cover its operating costs if Clinton does not operate. This is not a hypothetical scenario, as the NRC knows from Clinton's extraordinarily poor operating history.

Incredibly, AmerGen proposes that the NRC accept a commitment from PECO Energy and British Energy to make $110 million available to cover not just the operating costs of Clinton, but the costs of Clinton and all of its other plants. AmerGen is effectively asking the NRC for authorization to overstretch its finances and to put the public at risk for years. The $110 million is supposed to cover the operating costs of Three Mile Island 1, Nine-Mile Point 1, part of the operating costs of Nine-Mile Point 2 and Clinton. To put that $110 million number in perspective, the application states that the average operating costs for Clinton over a six-month period is approximately $80 million and that AmerGen had access to $65 million just for Three Mile Island 1. Application at 16.

The rhetoric in the application is good, stating that "AmerGen's financial qualifications must be evaluated in light of its planned operation of multiple units at multiple sites." Id. The rhetoric recognizes the critically important point that as AmerGen purchases more nuclear plants its financial exposure and need for funds increases dramatically. AmerGen's actions do not correspond to its rhetoric. AmerGen's financial qualifications fail miserably when evaluated in light of all of its proposed purchases. Despite the assertion in the application that the $110 million provides reasonable assurance that AmerGen will have sufficient funds for an extended outage at Clinton (Id. at 17), the application acknowledges that the $110 million would only be sufficient to fund a "six-month outage at CPS *and* a simultaneous three-month outage at TMI-1, or a six-month outage at TMI-1 *and* a simultaneous four-month outage at CPS." Id.

Curiously, the application claims that the $110 million is conservative, "because AmerGen contemplates operating several sites and revenues would be available from operations at other sites, such as Nine Mile Point, to fund operating and maintenance expenses during an outage." Id. Of course, as demonstrated by the history of extended outages in Illinois over the past few years, the application's approach is anything but conservative. AmerGen must be required, at a minimum, to provide access to funds sufficient to cover operating costs if all of its plants have simultaneous outages.

Even if history does not repeat itself, AmerGen must be prepared to cover the operating costs necessary to assure the safe and orderly shutdown of all four nuclear plants. There is no avoiding the reality that eventually all of the plants will shutdown. The costs of orderly shutdown will be very significant, since it will take AmerGen months to continue to safely maintain each of its plants until it can certify to the NRC that the fuel has been permanently removed from the reactor vessel. AmerGen provides no assurance that such funds will be available.

Illinois Power's ratepayers would have provided access to such funds under regulation. The public should not be required to accept less protection just because of the move to competition. Competition will provide AmerGen with the opportunity to make more profit than a regulated utility. AmerGen should, at a minimum, be required to provide the same protection that would have existed under regulation.

10 CFR §50.33(f)(2) requires "that the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license." The application does not satisfy the requirements of 10 CFR §50.33(f)(2) and cannot legally be accepted in its current

form. The NRC should reject the license transfer application unless AmerGen explicitly provides reasonable assurance that it can obtain the funds necessary to cover the operating costs and orderly shutdown of Clinton and each of the other nuclear plants that it intends to own and operate. AmerGen should be required to provide financial instruments demonstrating commitments from PECO Energy and British Energy to provide the necessary funding.

AmerGen Has Not Demonstrated that it Will Have Sufficient Funds to Decommission Clinton

AmerGen has made no attempt to demonstrate that it would have sufficient funds to decommission Clinton if Clinton must be decommissioned before the end of its anticipated life. In addition, AmerGen has made no attempt to demonstrate how it would fund the cost of maintaining its spent nuclear fuel until the United States Department of Energy takes control. The license transfer application merely attempts to demonstrate that AmerGen will have decommissioning funds available that exceed the current NRC formula amount for the basic radiological decommissioning of Clinton.

There is, of course, no assurance that Clinton and the other nuclear plants AmerGen intends to own will operate through the end of their anticipated lives. The recent history of the United States nuclear power industry demonstrates that, in addition to the risk of another Three Mile Island 2, in a competitive environment some nuclear plants will not survive. AmerGen, however, has provided no indication how it could fund decommissioning in the event Clinton must be decommissioned prematurely. Premature decommissioning would require far more money than AmerGen currently has available, since AmerGen assumes that it will accumulate the necessary funds through earnings on its decommissioning funds during the anticipated lifetime of Clinton. If Clinton must be decommissioned prematurely, AmerGen would not have

the opportunity to accumulate that money. AmerGen would not be able to simply wait to decommission Clinton until it had accumulated the money, since it would be incurring significant costs to maintain Clinton during any such waiting period. Similarly, AmerGen would have to continue to maintain the costs of its spent nuclear fuel until the United States Department of Energy took control of the fuel.

AmerGen is not a utility and will not be able to ask ratepayers for the funds necessary to cover early decommissioning and the costs of maintaining spent nuclear fuel. AmerGen is, apparently, asking the NRC to simply trust that it will make sufficient funds available to decommission its nuclear plants and maintain its spent nuclear fuel as long as necessary.

AmerGen will be unable to meet the decommissioning requirements set forth in 10 CFR §50.75 if Clinton is shutdown before the end of its anticipated life. The NRC should reject the license transfer application unless AmerGen provides reasonable assurance that it can obtain the funds necessary to decommission Clinton, including decommissioning before the end of Clinton's anticipated life and the costs of maintaining Clinton's spent nuclear fuel. The NRC should require that AmerGen, through PECO Energy and British Energy, explicitly assume all liability for decommissioning costs and the costs of maintaining spent nuclear fuel. AmerGen should be required to provide financial instruments demonstrating commitments from PECO Energy and British Energy to provide the necessary funding.

Conclusion

ELPC respectfully requests that the NRC reject the application for license transfer for the above-stated reasons, unless AmerGen agrees to provide the above-described financial instruments demonstrating its ability to fund the operation and decommissioning of Clinton.

Respectfully submitted,

Daniel W. Rosenblum

Daniel W. Rosenblum
Senior Attorney

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Company; Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. NPF–62 for the Clinton Power Station (CPS) currently held by Illinois Power Company (IP, or the licensee). The transfer would be to AmerGen Energy Company, LLC (AmerGen). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

Under the proposed transfer, AmerGen would be authorized to possess, use, and operate CPS under essentially the same conditions and authorizations included in the existing license. In addition, no physical changes will be made to CPS as a result of the proposed transfer, and there will be no significant changes in the day-to-day operations of CPS. Antitrust conditions of the CPS license are proposed to be deleted because, among other things, they apply to IP which will no longer be the licensee.

Pursuant to 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. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By September 8, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing procedure on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon John Lamberski, counsel for IP, at Troutman Sanders LLP, 600 Peachtree Street, N.E., suite 5200, NationsBank Plaza, Atlanta, Georgia 30308–2216 (tel: 404–885–3360; fax: 404–962–6610; e-mail: *john.lamberski@troutmansanders.com*) and Kevin P. Gallen, counsel for AmerGen, at Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869 (tel: 202–467–7462; fax: 202–467–7176; e-mail: *kpgallen@mlb.com*); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, D.C., 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by September 20, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated July 23, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Maryland, this 12th day of August 1999.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Projects Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21532 Filed 8–18–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Finding of No Significant Impact for Proposed Decommissioning Activity at the Fansteel Facility in Muskogee, OK

The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment to Source Material License No. SMB–911 for approval of a decommissioning plan to remediate for unrestricted use under the Site Decommissioning Management Plan (SDMP) Action Plan (57 FR 13389) of the Eastern Property Area of the Fansteel, Inc., (Fansteel) facility in Muskogee, Oklahoma. This area covers approximately 56.6 acres of the site and is defined in Revised Figure 3 of Fansteel's submittal dated July 16, 1999.