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Nuclear Regulatory Commission
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DOCKET 50-255 - LICENSE DPR-20 - PALISADES PLANT -
LICENSE CHANGE REQUEST - TRANSFER OF PALISADES PLANT OWNERSHIP
(TAC NO. 72245)

On February 27, 1989, Consumers Power Company (CPC) and Palisades Generating Company (PGC) applied for an amendment to Operating License DPR-20 to permit the transfer of plant ownership from CPC to PGC, with CPC to continue as the operating entity.

Your March 23, 1990 letter, Serial PAL-90-017, states that the NRC Staff is reviewing "certain aspects of the proposed joint venture to form the Palisades Generating Company" and that the following question has been raised regarding "financial arrangements between the partners":

> "What is the extent of the partners' financial liability in the event of a contingency requiring financial support?"

Fundamental to an answer is that the transaction will not be a "joint venture" and will not involve "partners", in the legal sense. PGC was incorporated as a Michigan corporation in December 1988. PGC's shareholders are expected to be CPC, Bechtel Power Corporation (Bechtel), and a yet-to-be-named third party.

Your question appears to address the extent of the duty of CPC, Bechtel and the third party, as shareholders of PGC, to respond to contingencies affecting the plant for which expenditures are required. Their duty as shareholders is limited by the amount of their investment, in this case $90 million, as would be the case with any shareholder of a corporation. However, the capitalization of PGC and the contractual commitments of PGC and its participants have been structured to provide reasonable assurance of sufficient funding for the operation, shutdown and decommissioning of Palisades, including funding and other provision for contingencies.

Loss contingencies, for example, will be covered by insurance and other financial protection. Under the Operating Agreement to be entered into between PGC as owner and CPC as operator, CPC will continue to maintain nuclear

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liability and property damage insurance, and certain other liability and property damage insurance coverage. The cost of the insurance (premium, retrospective premium or assessment, and the deductible or retention amounts) will be borne by PGC, except that CPC must make any deductible or retention payment resulting from loss due to CPC's negligence, willful misconduct or breach of the agreement.

However, PGC's cost of nuclear insurance and any Price-Anderson assessments, as well as the cost of plant decommissioning, will be paid for on a pass-through basis by CPC as the purchaser of electricity from the plant under the wholesale Power Purchase Agreement (PPA),[1] regardless of the amount of electricity made available to CPC by PGC. Under the PPA, CPC will purchase 100% of the plant's electrical output until PPA expiration at the end of 2006. Ultimately, CPC will recover the insurance, Price-Anderson, and decommissioning costs from its retail customers, as it does presently.

Capital additions and operating and maintenance expenses will also be funded by revenues from the PPA, as the rate for power includes allowances for these items based on projections of the costs that CPC would incur if it continued to own the plant. The rate is structured so as to recover not only normal O&M, but also approximately $300 million (1988 dollars) in additional capital expenditures during the term of the PPA.[2] Necessary capital expenditures in excess of that amount would have to be funded with PGC borrowings or from the $40 million of contingent commitments of CPC and Bechtel.[3]

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1 Appended as Attachment 4 to our February 27, 1989 license amendment application. CPC is obligated to pay nuclear insurance and Price-Anderson assessment costs as part of the charges under the PPA during and after the period in which CPC purchases electricity from the plant, except that if the plant remains in commercial operation after CPC is no longer obligated to purchase electricity from the plant then CPC will not be obligated to pay retrospective premiums and premium adjustments arising from nuclear incidents occurring in the post-purchase period. See § 10.4 of the PPA. Decommissioning funds accumulate in external trusts. The FERC-approved charge for decommissioning, which is subject to adjustment, will be designed to fully fund the decommissioning costs attributable to CPC's purchase of electricity from the Palisades Plant. See § 10.3 and Exhibit H to the PPA.

2 The contemplated capital expenditures no longer include steam generator replacement, which will occur before ownership is transferred to PGC.

3 Under the Asset Purchase Agreement between CPC and PGC and the Investment and Services Agreement among CPC, PGC and Bechtel, CPC and Bechtel are obligated, for the first seven years after the plant is transferred, to provide

up to $20 million each to PGC to fund necessary capital expenditures if funds are otherwise unavailable for that purpose.

The financial impact of outages will be mitigated by PGC's working capital and credit facilities and by the minimum capacity charge payment provisions of the PPA. After the first three months of an outage, and for up to nine months thereafter (except under certain circumstances specified in § 10.1.4 of the PPA), CPC will make minimum capacity charge payments to cover fixed O&M expense and debt service. Even if PGC were to run out of funds to pay CPC's invoices as plant operator, the Operating Agreement will require CPC to continue to maintain the plant in a safe condition until CPC is relieved of that obligation by the NRC.

Finally, since fuel cost[4] is also a pass-through item in the PPA rate, contingencies classifiable as fuel expense, including certain termination and failed-fuel costs, will be covered by the charges under the PPA.

We believe that the proposed funding of PGC and contractual undertakings of PGC and its participants give reasonable assurance that foreseeable financial contingencies will be provided for adequately.

Palisades Generating Company, as co-applicant, concurs in the foregoing answer.

David P Hoffman
Vice President
Nuclear Operations

CC Administrator, Region III, USNRC
NRC Resident Inspector - Palisades Plant

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[4] Including amounts required for spent fuel disposal, including payments to DOE (currently 1 mill/kWh).