



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATED TO AMENDMENT NO. 76 TO POSSESSION ONLY LICENSE NO. DPR-45
DIRECT LICENSE TRANSFER FROM LACROSSESOLUTIONS, LLC
TO DAIRYLAND POWER COOPERATIVE
LACROSSESOLUTIONS, LLC
DAIRYLAND POWER COOPERATIVE
LA CROSSE BOILING WATER REACTOR
DOCKET NOS. 50-409 AND 72-046

1.0 INTRODUCTION

By letter dated June 27, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18184A444), as supplemented by letter dated December 3, 2018 (ADAMS Accession No. ML18341A138), LaCrosseSolutions, LLC (LS) and Dairyland Power Cooperative (DPC) (collectively, the applicants) submitted an application, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and Section 50.80, "Transfer of licenses," of Title 10 of the *Code of Federal Regulations* (10 CFR), requesting U.S. Nuclear Regulatory Commission (NRC, the Commission) consent for the direct transfer of LS's Possession Only License No. DPR-45 for the La Crosse Boiling Water Reactor (LACBWR) in Genoa, Wisconsin, to DPC.

Specifically, the applicants requested that the NRC consent to the transfer of LS's NRC-licensed possession, maintenance, and decommissioning authorities back to DPC upon the completion of decommissioning activities at the LACBWR site. The applicants also requested approval of a conforming amendment to the license pursuant to 10 CFR 50.80 and 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit." Notice of the application was published in the *Federal Register* (FR) on October 11, 2018 (83 FR 51509). The supplemental letter dated December 3, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's no significant hazards consideration determination.

DPC is currently the licensed owner of LACBWR; it holds title to and ownership of the real estate encompassing most of the LACBWR site, as well as lease hold interests for the remaining portions of the site; title to and ownership of the spent nuclear fuel; and title to and ownership of all improvements at the LACBWR site. LS currently maintains a lease for the above-ground LACBWR structures (other than the LACBWR independent spent fuel storage

installation (ISFSI)) and previously assumed responsibility for all NRC-licensed activities at the LACBWR site, including responsibility under the license to complete decommissioning. LS will relinquish any remaining lease rights it holds at the site upon completion of decommissioning.

Upon the execution of the license transfer, DPC will maintain the onsite ISFSI and the ultimate disposition of the spent nuclear fuel will be provided for under the terms of DPC's Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste with the U.S. Department of Energy (DOE). DPC will also continue to maintain its nuclear decommissioning trust, an external¹ trust in which funds are segregated from its assets and outside its administrative control, in accordance with the requirements of 10 CFR 50.75(e)(1).

2.0 BACKGROUND

LACBWR was an Atomic Energy Commission (AEC) Demonstration Project Reactor that first achieved criticality in 1967, that commenced commercial operation in November 1969, and that was capable of producing 50 megawatts of electricity. LACBWR is located on the east bank of the Mississippi River in Vernon County, Wisconsin, about 1 mile south of the Village of Genoa, Wisconsin, and approximately 19 miles south of the city of La Crosse, Wisconsin, and is co-located with the Genoa Generating Station (Genoa 3), which is a coal-fired power plant that is still in operation. The Allis-Chalmers Company was the original licensee of LACBWR; the AEC later sold the plant to DPC and granted it Provisional Operating License No. DPR-45 on August 28, 1973 (ADAMS Accession No. ML17080A423).

LACBWR permanently ceased operations on April 30, 1987. DPC applied to amend the LACBWR license to a possession-only license on May 22, 1987 (ADAMS Accession No. ML17080A422) and completed reactor defueling on June 11, 1987 (ADAMS Accession No. ML17080A420). In a letter dated August 4, 1987 (ADAMS Accession No. ML17080A393), the NRC terminated DPC's authority to operate LACBWR under Provisional Operating License No. DPR-45 and granted the licensee possess-but-not-operate status. By letter dated August 18, 1988 (ADAMS Accession No. ML17080A421), the NRC amended DPC's Provisional Operating License No. DPR-45 to Possession Only License No. DPR-45 to reflect the permanently defueled configuration at LACBWR.

The NRC issued an order authorizing the decommissioning of LACBWR and approving the licensee's proposed Decommissioning Plan (DP) on August 7, 1991 (ADAMS Accession No. ML17080A454). Because the NRC approved DPC's DP before August 28, 1996 (the effective date of an NRC final rule concerning power reactor decommissioning (61 FR 39278; July 29, 1996)), the DP is considered the Post-Shutdown Decommissioning Activities Report (PSDAR) for LACBWR. The PSDAR public meeting was held on May 13, 1998, and subsequent updates to the LACBWR decommissioning report have combined the DP and PSDAR into the "LACBWR Decommissioning Plan and Post-Shutdown Decommissioning Activities Report." This document is also considered the Final Safety Analysis Report (FSAR) for LACBWR and is updated every 24 months in accordance with 10 CFR 50.71(e). DPC constructed an onsite ISFSI under its 10 CFR Part 72, "Licensing Requirements for the

¹ The application describes the DPC nuclear decommissioning trust as "a grantor trust in which funds are segregated from [DPC's] assets and outside [DPC's] administrative control, in accordance with the requirements of 10 CFR 50.75(e)(1)." For the purposes of this review, when discussing this trust, the NRC uses the term "external" from 10 CFR 50.75(e)(1) rather than the term "grantor" from the application.

Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste,” general license, and completed the movement of all 333 spent nuclear fuel elements from the Fuel Element Storage Well to dry cask storage at the ISFSI by September 19, 2012 (ADAMS Accession No. ML12290A027).

By order dated May 20, 2016 (ADAMS Accession No. ML16123A073), the NRC approved the direct transfer of Possession Only License No. DPR-45 for LACBWR from DPC to LS, a wholly-owned subsidiary of EnergySolutions, LLC, which was created for the sole purpose of completing the dismantlement and remediation activities at the LACBWR site. The NRC also approved a conforming license amendment, pursuant to 10 CFR 50.80 and 10 CFR 50.90, to reflect the change. The order was published in the *Federal Register* (FR) on June 2, 2016 (81 FR 35383). The transfer assigned DPC’s NRC-licensed possession, maintenance, and decommissioning authorities for LACBWR to LS in order to implement expedited decommissioning at the LACBWR site.

Under the terms of the previous license transfer transaction from DPC to LS, which are set forth in the Decommissioning Agreement (Reference 1 to the applicants’ June 27, 2018, submittal), LS became the lead NRC licensee responsible for all activities under the LACBWR license. LS promptly commenced decommissioning the LACBWR site effective June 1, 2016, and will complete all activities necessary to terminate the license and release the LACBWR site for unrestricted use as an industrial site no later than the end of the second quarter of 2019, except for a small area surrounding the ISFSI containing the spent nuclear fuel from LACBWR until its final disposition. Final decommissioning activities at LACBWR are scheduled to be completed in 2019 and the LACBWR License Termination Plan (LTP) was approved by the NRC on May 21, 2019 (ADAMS Accession No. ML19008A079).

3.0 REGULATORY EVALUATION

The proposed transaction described in the application constitutes a direct transfer of control of LACBWR from LS to DPC, requiring prior NRC approval. For direct transfers of control of a license, the NRC must find that the proposed transferee is qualified to be the holder of the license and that transfer of the license is otherwise consistent with applicable provisions of law, NRC regulations, and orders issued by the NRC.

The request for approval of the direct transfer of control of the LACBWR license as described above, and as discussed in this safety evaluation, is made pursuant to 10 CFR 50.80, which states, in part:

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 regulations in 10 CFR 50.80(b) and (c) apply. Section 50.80(b)(1)(i) of 10 CFR states that an application for a license transfer shall include as much of the 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 application were for an initial license.

Section 50.80(c) of 10 CFR states, in part, that:

...the 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.

Section 50.33(f) of 10 CFR states, in part, that:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21 (b) or § 50.22, [each 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.

Section 50.2, "Definitions," of 10 CFR states, in part, that an electric utility means:

[A]ny 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.

The NRC staff applies the guidance in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," dated March 1999 (ADAMS Accession No. ML013330264), to evaluate the financial qualifications of applicants to carry out the activities for which the permit or license is sought.

In addition, 10 CFR 50.33(k)(1) requires that applicants provide the information described in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

Section 50.54(bb) of 10 CFR requires, in part, a licensee to submit, for NRC review and preliminary approval, the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to DOE for its ultimate disposal in a repository.

In addressing foreign ownership, control, or domination (FOCD) issues, Sections 103d and 104d of the AEA provide, in relevant parts, that no license may be issued to the following:

[A]ny 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 NRC's regulation at 10 CFR 50.38, "Ineligibility of certain applicants," is the regulatory provision that implements this statutory language. The NRC staff evaluates license transfer applications in a manner that is consistent with the guidance provided in the NRC Standard Review Plan (SRP) on FOCD, published in the *Federal Register* (FR) on September 28, 1999,

to determine whether the proposed transferee is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (64 FR 52355).

The NRC staff also reviews information that relates to nuclear onsite property damage insurance requirements under 10 CFR 50.54(w) and the Price-Anderson insurance and indemnity requirements under Section 170 of the AEA and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

As applicable to the request to transfer the LACBWR license from LS to DPC, the NRC staff also used the following additional regulations and guidance during the technical and financial qualifications evaluations of the transfer to evaluate whether the qualifications of LACBWR's previous licensee (i.e., DPC) would be affected by the proposed transfer:

- 10 CFR 50.40(b), "Common standards;"
- NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR [Light-Water Reactor] Edition," Section 13.1.1, Revision 6, "Management and Technical Support Organization" (ADAMS Accession No. ML15005A449);
- NUREG-0800, Sections 13.1.2 - 13.1.3, Revision 7, "Operating Organization" (ADAMS Accession No. ML15007A296);
- Regulatory Guide 1.8, Revision 3, "Qualification and Training of Personnel for Nuclear Power Plants" (ADAMS Accession No. ML003706932); and
- American Nuclear Society/American National Standards Institute (ANS/ANSI) 3.1-1993, "Selection, Qualification, and Training of Personnel for Nuclear Power Plants."

The purpose of this evaluation is to ensure that the proposed corporate management is involved with, informed of, and dedicated to the safe maintenance and decommissioning of LACBWR and that adequate technical and financial resources will be provided to support these activities.

Finally, with respect to the requested conforming license amendment, 10 CFR 50.90 states, in part, that whenever a holder of a license desires to amend the license, an application for an amendment must be filed with the Commission fully describing the changes desired and following as far as applicable the form prescribed for original applications. Pursuant to 10 CFR 2.1315, "Generic determination regarding license amendments to reflect transfers," where administrative license amendments are necessary to reflect an approved license transfer, such amendments will be included in the order that approves the license transfer and any challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer.

4.0 FINANCIAL EVALUATION

4.1 Financial Qualifications

As stated in the application, DPC, headquartered in La Crosse, Wisconsin, is a generation and transmission electric cooperative that provides wholesale electricity to 25 member distribution cooperatives and 17 municipal utilities. DPC's generation resources include coal, natural gas, hydroelectric, wind, biomass, landfill gas, biogas, and solar. The Genoa 3 coal generating station that shares the licensed site with LACBWR is one of DPC's major generation resources.

The application also states that DPC meets the 10 CFR 50.2 definition of electric utility and is therefore exempt from further financial qualifications review as set forth in 10 CFR 50.33(f).

Based on the above, and the facts that DPC is currently the licensed owner of LACBWR and was previously the NRC licensee during reactor operations, the NRC staff finds that DPC is an electric utility as defined in 10 CFR 50.2, and that, as such, is not subject to further financial qualifications review pursuant to the guidance in NUREG-1577 and the regulations in 10 CFR 50.33(f). Therefore, the proposed license transfer transaction satisfies 10 CFR 50.80 with respect to financial qualification.

4.2 Decommissioning Funding Assurance

10 CFR 50.82(a)(8)(i) states that decommissioning trust funds may be used by licensees if: (a) the withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2; (b) the expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses should arise; and (c) the withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

DPC has continued to maintain its nuclear decommissioning trust (NDT) during the LS decommissioning activities at the LACBWR site. The NDT is an external trust in which funds are segregated from DPC's assets and are outside DPC's administrative control, in accordance with the requirements of 10 CFR 50.75(e)(1). In connection with the previous transfer to LS of possession, maintenance, and decommissioning authority for LACBWR, DPC entered into an Amended and Restated Nuclear Decommissioning Trust Agreement with its trustee (ARNDT Agreement) (see Exhibit A to the Decommissioning Agreement). The ARNDT Agreement, which governs the NDT, specifies a designated account within the trust set aside for license termination activities, i.e., decommissioning of LACBWR. The terms of the Decommissioning Agreement required that LS perform radiological decommissioning, environmental remediation of the LACBWR facility, and other activities relating to LACBWR in order to be entitled to request that DPC authorize disbursement from the trust account to LS. A separate account in the trust holds the funds necessary for the ultimate decommissioning of the LACBWR ISFSI and final license termination of Possession Only License No. DPR-45.

Details regarding the status of the decommissioning funding assurance maintained for LACBWR are provided in the Report on Status of Decommissioning Funding for Shutdown Reactor, dated March 25, 2019 (ADAMS Accession No. ML19092A241). According to the report, the projected remaining costs under 10 CFR 50.75 are estimated at \$1.6 million, with the decommissioning trust fund amount as of December 31, 2018, estimated at \$4.7 million.

As stated in the application, DPC currently funds and will continue to fund the operation and maintenance of the ISFSI through its annual operating revenue. DPC also retains financial responsibility for several costs related to LACBWR, including sole responsibility for the maintenance and security of the ISFSI site and related costs such as nuclear insurance, property taxes, emergency planning expenses, utilities, and annual NRC fees.

Based on the above, and the facts that DPC is currently the licensed owner of LACBWR and was previously the NRC licensee during reactor operations, the NRC staff finds that the proposed license transfer transaction from LS to DPC satisfies 10 CFR 50.80 with respect to decommissioning funding assurance.

4.3 Spent Fuel Management

DPC retains possession and ownership of, and title to, the spent nuclear fuel, keeps in effect its Standard Contract with DOE for the disposal of spent nuclear fuel, and maintains all rights and obligations under that contract, consistent with the terms of Section 302(b)(3) of the Nuclear Waste Policy Act of 1982, as amended, which contemplates that Standard Contract rights flow with "title to the spent nuclear fuel or high-level waste involved" (42 U.S.C. § 10222(b)(3)).² Therefore, DPC will remain the owner licensee for purposes of its ownership of the spent nuclear fuel at the LACBWR ISFSI site. DPC's continued ownership of the LACBWR spent nuclear fuel and retention of the associated title is authorized under general licenses granted for the ownership, but not possession, of spent fuel pursuant to 10 CFR 72.6(b) and the general licenses for byproduct, source, and special nuclear material granted pursuant to 10 CFR 31.9, "General license to own byproduct material," 10 CFR 40.21, "General license to receive title to source or byproduct material," and 10 CFR 70.20, "General license to own special nuclear material," respectively. DPC's financial responsibilities related to the ISFSI and the LACBWR spent nuclear fuel will be unchanged following transfer of control of the license from LS to DPC.

Based on the above, and the facts that DPC is currently the licensed owner of LACBWR and was previously the NRC licensee during reactor operations, the NRC staff finds that the proposed license transfer transaction from LS to DPC satisfies 10 CFR 50.80 with respect to spent fuel management.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

As stated in previous licensing documents and in the application for the LACBWR license transfer, DPC is owned by its members, all of which are domestic cooperatives or municipalities located within the United States. Furthermore, the application states that DPC does not have any foreign owners and is not subject to foreign ownership, control, or domination.

Based on this information and independent open-source analysis, the NRC staff concludes that it does not know or have reason to believe that DPC or the cooperatives or municipalities located within the United States that own DPC are owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. Therefore, DPC meets the FOCD requirement of 10 CFR 50.38.

6.0 ANTITRUST CONSIDERATION

The AEA does not require or authorize antitrust reviews of post-operating license transfer applications.³ The LACBWR license transfer application postdates the issuance of the

² Standard Contract No. DE-CR01-83NE44377, dated June 15, 1983, was entered into by DPC and the United States of America, represented by the DOE, to govern the spent nuclear fuel generated at LACBWR.

³ *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999).

operating license for the unit under consideration in this safety evaluation. Therefore, no antitrust review is required or authorized. Additionally, 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.

7.0 NUCLEAR INSURANCE AND INDEMNITY

Pursuant to the requirements of the Price-Anderson Act (Section 170 of the AEA) and the NRC's implementing regulations in 10 CFR Part 140, the current LACBWR indemnity agreement must be modified to reflect that, after the proposed direct license transfer takes effect, DPC will be the sole licensee of the facility.

Consistent with NRC practice, the NRC staff will require DPC to provide and maintain onsite property insurance as specified in 10 CFR 50.54(w), "Conditions of licenses." DPC is also required to provide evidence that it has obtained the appropriate amount of insurance in accordance with 10 CFR 140.11(a)(4), consistent with the exemptions previously issued to LACBWR for insurance coverage, which will be effective concurrent with the date of the license transfer and amended indemnity agreement. Therefore, the Order approving the application will be conditioned as follows:

Prior to the closing of the license transfer from LS to DPC, DPC shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) at the NRC that it has obtained or continues to possess the appropriate amount of insurance required of a licensee under 10 CFR 140.12 and 10 CFR 50.54(w) of the Commission's regulations, consistent with the exemptions issued to LACBWR on June 26, 1986, and July 24, 2018.

The NRC staff will also remove reference to *LaCrosseSolutions*, LLC, from the existing LACBWR indemnity agreement with DPC and ensure that the amount of onsite insurance reflects the amount approved in the exemption granted to LACBWR on July 24, 2018 (i.e., \$50 million).

Based on the above, the NRC staff concludes that the proposed direct license transfer, as conditioned, satisfies the nuclear insurance and indemnity requirements of 10 CFR Part 140 and 10 CFR Part 50.

8.0 TECHNICAL EVALUATION

8.1 Management and Technical Support Organization

Under the terms of the previous license transfer transaction, LS entered into a Company Services Agreement with DPC, pursuant to which DPC provided operations, maintenance, access control, and security services for the LACBWR ISFSI during decommissioning of the LACBWR site. DPC's Genoa Site Manager has onsite responsibility for these services, such that DPC has been responsible for all ISFSI operations during LACBWR decommissioning and will continue to do so following the proposed license transfer. DPC has demonstrated their managerial and technical qualifications to perform these functions throughout decommissioning.

Accordingly, the NRC staff concludes that the DPC management and technical support organization will adequately support the operation and maintenance of the LACBWR ISFSI.

8.2 Onsite Organization

The NRC staff reviewed the application to determine the acceptability of the onsite organization at LACBWR and to evaluate changes to the organization proposed as a result of the license transfer. The LACBWR operating organization was determined to be acceptable by the initial licensing review. Subsequent safety-related changes to the operating organization have been evaluated with an appropriate methodology. Because the organizations and personnel now responsible for the operation and maintenance of the LACBWR ISFSI will not be affected by the license transfer from LS to DPC, the NRC staff concludes that the onsite organization will adequately support the ongoing operation and maintenance of the LACBWR ISFSI.

8.3 Restricted Data

According to the application, the proposed transfer of ownership does not involve any Restricted Data or other Classified National Security Information or result in any change in access to such Restricted Data or Classified National Security Information. The existing restrictions on access to Restricted Data and Classified National Security Information are unaffected by the proposed transfer. In compliance with Section 145(a) of the AEA and 10 CFR 95.35, "Access to matter classified as National Security Information and Restricted Data," the applicants agree that restricted or classified defense information will not be provided to any individual until the Office of Personnel Management investigates and reports to the NRC on the character, associations, and loyalty of such individual, and the NRC determines that permitting such person to have access to Restricted Data will not endanger the common defense and security.

8.4 Technical Qualifications Conclusion

In previous licensing documents and in the application for the LACBWR license transfer, DPC has described the corporate level management and technical support organization, as well as the onsite operating organization, that would be responsible for the operation and maintenance of the LACBWR ISFSI, which will be the only NRC-regulated activity remaining onsite after the proposed transfer of licensed authority to DPC. The NRC staff concludes that: (1) DPC will have an acceptable corporate organization; (2) DPC will retain an acceptable onsite organization; and (3) DPC will have adequate resources and support for the safe operation and maintenance of the LACBWR ISFSI after the transfer of licensed authority from LS to DPC. The NRC staff also determined that the application for license transfer adequately addresses the relevant requirements of 10 CFR 50.40(b), 10 CFR 50.80, and 10 CFR 95.35. Accordingly, the NRC staff concludes that DPC is technically qualified to hold the LACBWR Possession Only License No. DPR-45, as proposed.

9.0 CONFORMING LICENSE AMENDMENT

9.1 Conforming Amendment

The applicants requested a conforming amendment to Possession Only License No. DPR-45 for LACBWR. No physical or operational changes to the facility were requested beyond those captured in the LACBWR PSDAR and LACBWR LTP, with the exception of deleting License

Condition 2.C.(4), "Fire Protection," for the LACBWR facility. The applicants also proposed to add the following language to License Condition 2.E on the expiration of the LACBWR license:

Per 10 CFR 50.51(b), Facility Possession Only License No. DPR-45 continues in effect until the Commission notifies the licensee that the License has been terminated.

The applicants stated that upon the completion of decommissioning at the LACBWR facility, there will no longer be a radiological hazard that could be affected by a fire on the former plant site. All of the buildings that contained radioactive material will have been removed and the area surveyed to ensure that the unrestricted release criteria defined in 10 CFR Part 20, "Standards for Protection Against Radiation," are met. The LACBWR ISFSI has a separate fire protection program that is controlled by license requirements contained in the 10 CFR Part 72 Certificate of Compliance for the spent fuel storage systems. Therefore, the NRC staff concludes that the fire protection license condition for the former LACBWR facility is no longer required and can be deleted from the license upon the transfer of the license to DPC.

The NRC staff determined that the addition of language from 10 CFR 50.51(b) (regarding the continuation of a license for a facility that has permanently ceased operations) to the LACBWR Possession Only License No. DPR-45 is consistent with the intent 10 CFR 50.51, "Continuation of license," and aligns with similar changes to license expiration dates granted to other decommissioning nuclear plants (see, e.g., Amendment No. 255 to the Crystal River Unit 3 Nuclear Generating Plant Facility Operating License (ADAMS Accession No. ML17027A160)). Therefore, the NRC staff concludes that the language of the continuance of the LACBWR license until the Commission notifies the licensee that the license has been terminated may be added to Possession Only License No. DPR-45 upon the transfer of the license to DPC.

The proposed conforming amendment, including the removal of the fire protection license condition and the addition of license continuation language from 10 CFR 50.51(b), for the LACBWR facility only reflects the proposed license transfer action and the results of the completion of decommissioning activities at the site. The amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

9.2 State Consultation

In accordance with the Commission's regulations, the Wisconsin State official, Mr. Paul Schmidt, Manager of the Radiation Protection Section at the Bureau of Environmental and Occupational Health, in the Division of Public Health for the Wisconsin Department of Health Services, was notified of the proposed issuance of the amendment on April 23, 2019. The State official responded on April 26, 2019, and had no comments.

9.3 Conforming Amendment Conclusion

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 the proposed action; (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.

10.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of a license issued by the NRC and an associated amendment required to reflect the approval of the transfer. 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 the approval of the direct license transfer application and conforming license amendment.

11.0 CONCLUSION

Based on the foregoing, and subject to the condition described herein, the NRC staff concludes that DPC is financially and technically qualified to hold the license for LACBWR, as described in the application, and engage in the continuing operating and maintenance activities associated with the LACBWR ISFSI. The NRC staff further concludes that there are no disqualifying decommissioning funding assurance, spent fuel management, foreign ownership, control, or domination, antitrust, or nuclear insurance and indemnity issues associated with the proposed transfer, and that the proposed transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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Dated: September 24, 2019