



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

RELATED TO AMENDMENT NOS. 128 AND 102 TO

FACILITY OPERATING LICENSE NOS. DPR-51 AND NPF-6

ARKANSAS POWER AND LIGHT COMPANY

ARKANSAS NUCLEAR ONE, UNIT NOS. 1 AND 2

DOCKET NOS. 50-313 AND 50-368

1.0 INTRODUCTION

By application dated July 1, 1988 as supplemented by letter dated August 15, 1989, Arkansas Power and Light Company (AP&L or the licensee) requested changes to the License Conditions to Facility Operating License Nos. DPR-51 and NPF-6 for the Arkansas Nuclear One, Units 1 and 2 (ANO-1&2). The proposed changes would transfer the operating responsibility to Entergy Operations, Inc. (EOI). This proposed action is also being taken for the Waterford 3 and Grand Gulf 1&2. The ownership of ANO-1&2 will remain with Arkansas Power and Light Company, the ownership of Waterford 3 will remain with Louisiana Power and Light Company, and the ownership of Grand Gulf 1&2 will remain primarily with Systems Energy Resources, Inc.

2.0 DISCUSSION

As early as May 1988, the licensees for Waterford 3 and Arkansas Nuclear One, Units 1 and 2 announced with System Energy Resources, Inc. (SERI) the proposed transfer of operations and maintenance responsibilities to SERI. Subsequently, by application dated August 15, 1989, AP&L has proposed the transfer of operations and maintenance to Entergy Operations, Inc. (EOI). Entergy Operations, Inc., is to be a new company and subsidiary of Entergy Corporation, formerly known as Middle South Utilities, Inc. EOI is also proposed to operate and maintain Waterford 3 and Grand Gulf 1&2. The nuclear staff of each of the facilities would be transferred to EOI and only those activities requiring immediate attention would be proposed for the necessary changes in the initial amendment. Our evaluation of these changes is provided in the Evaluation section.

The consolidation of the nuclear staff under EOI would not affect the ownership of the plants and is being proposed for the benefits enumerated by the licensee. These benefits are listed, among other places, in the licensee's June 1, 1988 (Reference 1), July 1, 1988 (Reference 2), and August 15, 1989 (Reference 7) submittals and, as stated by the licensee, include the following:

- 1) EOI will have a repository of system nuclear operating expertise and experience. Consolidation into one nuclear operating company will enhance public safety and economic operations.

- 2) EOI will be better able to provide a consistent philosophy of operation of the system nuclear units. This focused philosophy can be used to achieve excellence in all aspects of nuclear operation.
- 3) The consolidation will allow more effective communication and use of system nuclear operating experience.
- 4) Certain non-nuclear support functions will become specialized and focused on the requirements of a nuclear operation company and will thereby be more effective in their support of Arkansas Nuclear One.
- 5) Creation of a system-wide nuclear operating company will contribute to a higher sustained level of employee performance, provide a broader base for more competitive environment for upper management candidates, provide an environment in which all employees will be more highly motivated toward high performance, and provide greater opportunity for career progression.
- 6) Consolidation will make organizational structures, career path policies, and procedures internally consistent and will separate nuclear from non-nuclear employees which will permit managers to focus on special needs and requirements of nuclear employees. This will allow EOI to be competitive in the market for skilled employees and certain specialty individuals once recruited.

The information provided by the licensee is to support the transfer of operating responsibility to EOI and the attainment of the above benefits will depend on the licensees' (or EOI's) development and implementation of effective programs and controls.

Early in the review the NRC expressed the need for the licensee to keep the public and other agencies informed of the proposed transfer of operations to SERI (now EOI). By letters dated September 9, 1988 and October 13, 1988 and September 22, 1989 (References 4, 6, and 8), the licensee outlined their efforts in this regard. The NRC staff also contacted the designated State Official, Director, Environmental Health Protection, Arkansas Department of Health, State of Arkansas, and discussed the proposed transfer.

3.0 EVALUATION

The staff's evaluation is of the licensee's submittal dated July 1, 1988 (Reference 2) as supplemented by letter dated August 15, 1989 (Reference 7) and from supporting information in the proposed Operating Agreement between AP&L and SERI as contained in the licensee's submittal dated October 17, 1988 (Reference 5). The proposed Operating Agreement between the licensee and SERI (now EOI) delineates their respective responsibilities in operating the plant commensurate with NRC requirements, including those contained in License Conditions. After issuance of the license amendment and the effective date of the transfer of operation to EOI, the NRC will normally communicate with AP&L through EOI and any changes to the Operating

Agreement to fulfill NRC requirements will be an AP&L and EOI matter not to influence or delay implementation of the NRC requirement.

The staff in making its evaluation has applied the criteria and review areas required by 10 CFR 50.80 "Transfer of Licenses" as appropriate. The transfer of operator of the facilities from AP&L to EOI simplified the review in that the AP&L personnel currently acting in all areas as nuclear operations personnel will transfer to EOI and the creation of EOI as an operating company will remain, along with AP&L as owner, within the existing company of Entergy Corporation.

Management and Technical Qualifications

The requested change would transfer AP&L's nuclear organization so that the Vice President - Nuclear for ANO will report to the President of EOI through the Executive Vice President and Chief Operating Officer. The present nuclear organization, down through the plant staff, will remain essentially in place as EOI employees. Therefore, the technical qualifications of the proposed ANO organization will be at least equivalent to the existing organization. This includes engineering support which, at ANO is an integral part of the Nuclear organization.

We find the requested change acceptable as it meets the acceptance criteria of Section 13.1 of NUREG-0800, the Standard Review Plan. This requested change does not require any revision to Section 6 of the Technical Specifications for Arkansas Nuclear One, Units 1 and 2.

Financial Considerations

The ownership of the facilities and all rights to electric power from the facilities will remain with AP&L. In addition, as stated on page 17 of AP&L's Application to Amend Facility Operating License Nos. DPR-51 and NPF-6 dated August 15, 1989, (Reference 7) Pursuant to an operating agreement between EOI and AP&L, "all costs for the operation, construction, maintenance, repair, decontamination and decommissioning of ANO-1 and ANO-2 incurred or accrued are liabilities of AP&L when incurred or accrued." The staff notes, however, that Article V, Section 5.1 of the Proposed Operating Agreement between AP&L and EOI as transmitted by letter dated September 29, 1989 (Reference 9) suggests that AP&L may not agree to pay for operation and capital improvement costs that exceed either (1) the annual budget for the facility to which AP&L and EOI are to agree by November of the year prior to the budget year or (2) the maximum amounts to be paid within the parameters of the then-current EOI five-year business plan. Notwithstanding this, Article XI, Section 11.5 provides that neither EOI nor AP&L is permitted to delay or withhold payment due and owing under the Proposed Operating Agreement except that AP&L shall have the right to make any contested payments under protest. The staff understands the provisions contained in Sections 5.1 and 11.5 of that Proposed Operating Agreement taken together do not contradict AP&L's commitment, as referenced above, to pay for all costs for the operation, construction, maintenance, repair, decontamination and decommissioning of ANO-1 and ANO-2. The staff further notes that any final operating agreement between EOI and AP&L will continue with these same understandings.

AP&L will remain subject to the retail rate jurisdiction of the Arkansas Public Service Commission. Since AP&L is an electric utility, it does not have to provide additional information to the Commission to demonstrate its financial qualification to carry out the activities for which the license amendment is sought.

The staff believes that there will be no financial consequences adversely affecting safety from allowing EOI to assume exclusive responsibility for making safety decisions. The economic benefits which the licensee anticipates from EOI's operation of ANO-1 and ANO-2 are not expected to be gained at the expense of public health and safety given AP&L's continuing commitment to pay the costs, including safety-related costs, of ANO-1 and ANO-2. Thus, the staff concludes that the financial consequences of the proposed action will not adversely affect protection of public health and safety.

Antitrust

The license amendment request transferring the operation of ANO Unit 2 from AP&L to EOI is subject to antitrust review pursuant to Section 105c of the Atomic Energy Act, as amended. Notification of receipt and a request for comments on antitrust issues pursuant to this amendment, as well as requests for similar transfers involving the Waterford 3 and Grand Gulf nuclear units, were published in the Federal Register on November 1, 1989 (FR Vol. 54, 46168). Comments were received from a group of wholesale electric customers (Wholesale Customers) of the Arkansas Power & Light Company.

Wholesale Customers requested the NRC to either extend the existing license conditions imposed on the Grand Gulf facility to the entire multi-state territory served by Entergy Corporation's nuclear plants by imposing similar license conditions on ANO Unit 2 or extending the geographic area applicable to the Grand Gulf license conditions to encompass the entire area served by Entergy Corporation. Wholesale Customers have not expressly addressed the competitive implications of the addition of EOI as operator of the facility. They also have not provided any other information which would allow antitrust conditions to be imposed upon ANO Unit 2 or new conditions imposed on Grand Gulf extending the geographic reach of the existing conditions. Formal antitrust reviews for facilities with operating licenses are only required when there are significant changes in the licensee's activities from the previous antitrust review. In South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), CLI 80-28, 11 NRC 817, 820, 835 (1980), the Commission held, among other things, that significant changed circumstances occur when there are changes which would create or maintain a situation inconsistent with the antitrust laws; an antitrust review of these changes is warranted only when it would likely be concluded that the changed situation has negative antitrust implications. See also, Houston Lighting and Power Co. (South Texas Units 1&2), CLI 77-135, 5 NRC 1303, 1317 (1977). Wholesale Customers contend that changed circumstances have resulted from a FERC decision requiring the costs of Grand Gulf Unit 1 to be shared by all of the subsidiaries of Entergy Corp. However, they have

not provided proof, nor furnished adequate explanation as to why this accounting change constitutes anticompetitive activity or has adverse antitrust implications. In addition, Wholesale Customers contend that license conditions are necessary since their existing wholesale contracts do not contain the type of terms and conditions that are included in contracts resulting from antitrust reviews associated with other nuclear facilities. This assertion likewise does not constitute a changed circumstance since Wholesale Customers have not established how the absence of these terms in their contracts creates or maintains a situation inconsistent with the antitrust laws.

In its review of the proposed amendment adding EOI to the ANO Unit 2 license, the staff was concerned with what role EOI would play in marketing or brokering of power or energy from each of the Entergy Corporation nuclear units. In an effort to avoid a formal antitrust review, the licensee has agreed to add an antitrust license condition to its ANO Unit 2 license that will effectively preclude EOI from using power or energy from ANO Unit 2 in a manner that would affect competition in bulk power services throughout AP&L's service area.

Moreover, the same license condition will hold AP&L responsible and account-able for the actions of its agents, including EOI, that pertain to marketing or brokering of power or energy from ANO Unit 2. The staff feels this license condition will ensure that EOI will do no more than operate ANO Unit 2 and will not be involved in the competitive arena associated with marketing or brokering of power or energy. As a result of these actions, the staff has completed its antitrust review of this amendment request.

Restricted Data

The licensee has addressed the limits on restricted data and other defense information and EOI agrees to the appropriate conditions of protection and processes. The current employees of AP&L who are aware of and responsible for safeguarding information will transfer to EOI, therefore, no reduction in understanding or responsibility is expected.

Emergency Planning

The licensee proposes to transfer to EOI the authority and responsibilities for functions necessary to fulfill the emergency planning requirements specified in 10 CFR 50.47(b) and Part 50, Appendix E. There will be no initial changes to the ANO-1 and ANO-2 emergency plan or planning organization.

The EOI organization may, in the future, add organizational components to assume overall emergency planning. In a letter dated July 29, 1988, the NRC stated its position on plan and program centralization and NRC approvals. With centralization, plans may be transferred to another area

or site. Our concern will be that the new organization possesses the technical capabilities as was found acceptable at the ANO site. Any changes with the plans or programs at the site may be made in accordance with established rules and processes. Since it is not clear that the

rules and processes contemplated such drastic changes as transfer to a new organization at a new site, the NRC has determined and the licensee has agreed that the initial plan and program change to a new site would be reviewed by the NRC prior to the change. Subsequent changes would revert to current established practices. This understanding with the licensee and EOI applies to areas other than Emergency Planning as well.

The current and eventual emergency plan will depend upon a continuing working arrangement between AP&L and EOI. Certain support functions will remain with AP&L and AP&L can be expected to provide emergency non-nuclear support from other company areas as needed. We find this sense of cooperation both essential and acceptable.

Offsite Power

General Design Criterion 17 requires that there be an assured source of power to the plant. The offsite power available to ANO and as found acceptable to the NRC is as described in the Final Safety Analysis Report. With the transfer to EOI, this will not change, however, arrangements have been proposed for the interface between EOI as operator of a nuclear plant and AP&L non-nuclear employees for the upkeep and maintenance of offsite power ties to the plant. These arrangements are to assure that the NRC's acceptance of the offsite power to ANO-1&2 is continued.

Security and Exclusion Area Control

The employees of AP&L responsible for security will become EOI employees and EOI will continue to maintain and implement the security plans as previously found acceptable. Some transition changes may be appropriate to reflect AP&L and EOI relationships but it is not expected that these changes will decrease the effectiveness of the plans. Processes are underway to address such changes. Control of the exclusion area involving security and non-nuclear interfaces with AP&L has been addressed by the licensee and include considerations for normal and emergency access. Written procedures and agreements are appropriate to assure that NRC approved activities in and control of the exclusion area is maintained.

Quality Assurance Program

EOI will assume responsibility of the functions associated with the ANO quality assurance program. The organization, function, and structure of the ANO quality assurance department will not be affected by this license amendment. As discussed in the Emergency Plan section above, any proposed change to centralize plans to a new site will require NRC initial approval; the quality assurance plans also fall in the category and understanding with AP&L and EOI.

Training

The licensee has stated that the training program, requirements, and maintenance of the Institute of Nuclear Power Operations accreditation for licensed and non-licensed training will continue as before but under EOI. Processes for NRC approval of changes that may decrease the scope of the approved operator requalification program will continue as before.

License Conditions

The licensee has proposed changes to the license conditions to reflect EOI operation and maintenance of ANO and continued AP&L ownership of ANO. We have reviewed the proposed license conditions and recommend two changes. Reactor fuel at ANO is to remain at ANO unless specific approval is obtained otherwise. The license condition for EOI to receive, possess, and use reactor fuel is to be modified to reflect ANO reactor fuel at the ANO site. A license condition will be added that, 1) prohibits EOI from marketing or brokering power or energy produced from ANO, Unit 2, and 2) holds AP&L responsible and accountable for actions of its agents that pertain to marketing or brokering of such power or energy. The licensee agrees to these changes.

4.0 CONTACT WITH STATE AND OTHER OFFICIALS

The NRC staff has advised the Director, Division of Environmental Health Protection, Arkansas Department of Health, State of Arkansas of the proposed determination of no significant hazards consideration. No comments were received on the no significant hazards consideration. Comments were received on antitrust matters from representatives of the cities of Benton, Conway, North Little Rock, Osceola, Prescott and West Memphis and from the Farmers Electric Cooperative Corporation (see Reference 10).

5.0 ENVIRONMENTAL CONSIDERATION

Pursuant to 10 CFR 51.21, 51.32 and 51.35, an environmental assessment and finding of no significant impact was published in the Federal Register on November 30, 1989 (54 FR 49368).

Accordingly, based upon the environmental assessment, the Commission has determined that issuance of this amendment will not have a significant effect on the quality of the human environment.

6.0 CONCLUSION

Based upon its evaluation of the proposed changes to the ANO-1 and ANO-2 License Conditions, the staff has concluded that: there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, and such activities will be conducted in compliance with the Commission's regulations and the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Dated: December 14, 1989

Principal Contributors: D. Wigginton W. Lambe R. Wood
 F. Allenspach C. Harbuck C. Poslusny

References

- 1) Letter dated June 1, 1988 from T. G. Campbell to NRC, Attention: D. M. Crutchfield, transmitting draft proposed amendment for SERI operation of Arkansas Nuclear One, Units 1 and 2.
- 2) Letter dated July 1, 1988 from T. G. Campbell to NRC, Attention: D. M. Crutchfield, transmitting application for amendment reflecting SERI operation of Arkansas Nuclear One, Units 1 and 2.
- 3) Letter dated July 29, 1988 from C. C. Harbuck to T. G. Campbell, subject "Systems Energy Resources, Inc. (SERI) License Amendment Application for Arkansas Nuclear One, Units 1 and 2," transmitting clarifications of positions and requesting AP&L response.
- 4) Letter dated September 9, 1988 from O. D. Kingsley to NRC, response to NRC July 29, 1988 request for information (Reference 3 above).
- 5) Letter dated October 17, 1988 from D. R. Howard to NRC, subject "AP&L/SERI Proposed Operating Agreements" transmitting proposed operating agreements, Security and Exchange Commission submittals, letter reference 2) above, Arkansas Public Service Commission submittal, and SERI Financial Statement dated June 30, 1988.
- 6) Letter dated October 13, 1988 from J. G. Cesare, Jr. (SERI) to NRC transmitting actions to keep public and appropriate agencies fully informed.
- 7) Letter dated August 15, 1989 from T. G. Campbell to NRC transmitting applications for amendment reflecting EOI operation of Arkansas Nuclear One, Units 1 and 2.
- 8) Letter dated September 22, 1989 from J. J. Fisicaro to NRC regarding Entergy Operations, Inc. public information.
- 9) Letter dated September 29, 1989 from J. J. Fisicaro to NRC regarding Securities and Exchange Commission Application.
- 10) Letter dated November 30, 1989 from Z. Wilson regarding Antitrust Comments.



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

December 14, 1989

Docket No. 50-313
50-368

Amendment to Indemnity Agreement No. B-65
Amendment No. 11

Effective December 14, 1989, Indemnity Agreement No. B-65, between Arkansas Power and Light Company, and the Atomic Energy Commission, dated November 8, 1972, as amended, is hereby further amended as follows:

The following named licensee "Entergy Operations, Inc." is added to the indemnity agreement.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Eileen M McKenna

Eileen M. McKenna, Acting Chief
Policy Development and Technical Support Branch
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and Analysis Staff
Office of Nuclear Reactor Regulation

Accepted _____, 1989

Accepted _____, 1989

By _____
Arkansas Power and Light
Company

By _____
Entergy Operations, Inc.