



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

REGARDING PROPOSED MERGER

DUQUESNE LIGHT COMPANY

DOCKET NOS. 50-334 AND 50-412

BEAVER VALLEY POWER STATION, UNIT NOS. 1 AND 2

1.0 INTRODUCTION

Under cover of a letter dated August 1, 1997, Duquesne Light Company (DLC), requested the consent of the Nuclear Regulatory Commission (NRC) in connection with a proposed merger of the parent of DLC and Allegheny Power Systems, Inc. DLC, a wholly owned subsidiary of DQE, Inc., owns a 47.50% interest in Beaver Valley Power Station, Unit No. 1 (BVPS-1) and a 13.74% interest in Beaver Valley Power Station, Unit No. 2 (BVPS-2). Under the proposed merger of DQE, Inc. and Allegheny Power System, Inc., DLC will become an indirect subsidiary of Allegheny Power System, Inc., which will change its name to Allegheny Energy, Inc. (Allegheny Energy). The merger agreement provides that DQE, Inc. common stockholders will be entitled to exercise each DQE, Inc. share for 1.12 shares of Allegheny Energy stock.

After the merger, DLC will continue to be a public utility providing the same utility services as it did immediately preceding the merger. DLC will continue to be a licensee for BVPS-1 and BVPS-2. No direct transfer of the operating licenses or interests in the units will result from the proposed merger. The technical management and nuclear organization of DLC currently responsible for operating and maintaining BVPS-1 and BVPS-2 will remain responsible for the plants' operation and maintenance after the merger. Approval for the indirect transfer of the licenses to the extent effected by the proposed merger is being sought from the NRC pursuant to 10 CFR 50.80.

Pursuant to 10 CFR 50.80, the NRC may approve the transfer of the control of a license after notice to interested persons. Such approval is contingent upon the NRC's determination that the holder of the license following the transfer of control is qualified to hold the license, and the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the NRC.

2.0 FINANCIAL QUALIFICATIONS

DLC will continue as an owner operator of BVPS-1 and BVPS-2 (47.50% and 13.74% ownership interests, respectively), and will remain an electric utility engaged in the generation and distribution of electricity for wholesale and retail markets, the cost of which electricity is recovered through rates established by separate regulatory authorities.

DLC's application states that the proposed merger will have no effect on the funds available for DLC to carry out activities under the operating licenses. The Federal Energy Regulatory Commission will still regulate DLC's wholesale electric rates, and the Pennsylvania Public Utility Commission will also maintain jurisdiction over the licensee's retail electric rates. In addition, the application states that the proposed merger will have no effect on DLC's capital structure or capital costs and will not result in any change in DLC's wholesale or retail rates. Moreover, there will be no change in DLC's source of funds for operating costs and eventual decommissioning costs for BVPS-1 and BVPS-2. As an electric utility, DLC is exempt from further financial qualifications review, pursuant to 10 CFR 50.33(f).

However, in view of the NRC's concern that a merger or restructuring can lead to a diminution of assets necessary for the safe operation and eventual decommissioning of a licensee's nuclear power plant, the NRC's practice has been to condition respective license transfer approvals upon a requirement that the licensee not transfer significant assets from the licensee to an affiliate without notifying the NRC. This requirement assists the NRC in assuring that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facility. Thus, the following should be made a condition of the Order approving the application regarding the proposed merger and restructuring whereby DLC will become an indirect subsidiary of Allegheny Energy:

DLC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from DLC to its first- or second- tier parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of DLC's consolidated net utility plant, as recorded on DLC's books of accounts.

### 3.0 TECHNICAL QUALIFICATIONS

DLC has stated in its application that the proposed merger will not change the technical qualifications of DLC to operate and maintain BVPS-1 and BVPS-2. The utility will continue to exist as a separate entity that will function in the same fashion as it did before the proposed merger. DLC's technical management and nuclear organization will continue unchanged. Accordingly, the proposed merger will not affect the technical qualifications of DLC.

### 4.0 ANTITRUST

Section 105c of the Atomic Energy Act of 1954, as amended (the Act), which requires the NRC to conduct antitrust reviews, applies to an application for a license to construct or operate a facility licensed under Section 103 of the



Act. BVPS-1 was licensed under Section 104b and, as a result, is not subject to antitrust review by the NRC staff in connection with consideration of the application regarding the proposed merger. Furthermore, although Allegheny Energy may become the second-tier holding company of a licensee for BVPS-2, i.e., may indirectly acquire control of the BVPS-2 license, the application does not indicate that Allegheny Energy will be performing activities for which a license is needed. Since approval of the application would not involve the issuance of a license, the procedures under Section 105c do not apply, including the making of any "significant changes" determination.

American Municipal Power-Ohio, Inc. (AMP-Ohio) filed comments dated November 7, 1997, relating to the proposed merger, but that are specific to the antitrust license conditions contained in the license for the Perry Nuclear Power Plant, Unit 1 (PNPP). These comments will be addressed in the safety evaluation for PNPP concerning the subject merger and indirect transfer of the PNPP license.

#### 5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The licensee indicated in its application that after the proposed merger, DLC will not be owned, controlled, or dominated by an alien, foreign corporation, or foreign government. The NRC staff does not know or have reason to believe that consummation of the proposed merger will result in DLC being owned, controlled, or dominated by foreign interests.

#### 6.0 CONCLUSIONS

In view of the foregoing, the NRC staff concludes that the proposed merger of Allegheny Power System, Inc. and DQE, Inc. will not adversely affect the financial or technical qualifications of DLC with respect to the operation and decommissioning of the BVPS-1 and BVPS-2 facilities. Also, there do not appear to be any problematic antitrust or foreign ownership considerations related to the BVPS-1 and BVPS-2 licenses that would result from the proposed merger. Thus, the proposed merger will not affect the qualifications of DLC as a holder of the licenses, and the transfer of control of the licenses, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. Accordingly, with the condition discussed above relating to significant asset transfers, the NRC should approve the application regarding the proposed merger.

Principal Contributor: M. A. Dusaniwskyj

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