



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED MERGER OF PACIFICORP AND SCOTTISHPOWER PLC

TROJAN NUCLEAR PLANT

DOCKET NO. 50-344

1.0 INTRODUCTION

By application dated May 24, 1999, PacifiCorp requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of Facility Operating License No. NPF-1 for the Trojan Nuclear Plant (Trojan), to the extent held by PacifiCorp in regard to PacifiCorp's 2.5 percent ownership interest in Trojan. The other two owners of Trojan are Portland General Electric Company (PGE), with a 67.5 percent interest, and the Eugene Water & Electric Board, with a 30 percent interest. PGE is the licensed entity responsible for maintenance and decommissioning activities. PGE is currently in the later stages of decommissioning Trojan's radioactive components, and Trojan's pressure vessel, including the reactor, has been sent to the Hanford Nuclear Reservation for burial.

The NRC staff reviewed the initial application and determined that additional information was needed to complete the review. On August 30, 1999, the NRC sent a request for additional information (RAI) to counsel for PacifiCorp, and counsel responded with supplemental information by letters dated September 20 and September 23, 1999 (referred to as "supplement"). The supplement did not expand the scope of the application as originally noticed in the FEDERAL REGISTER on August 2, 1999 (64 FR 41972).

PacifiCorp is a diversified energy company headquartered in Portland, Oregon, with operations in the United States and Australia. The requested transfer approval relates to a proposed merger in which PacifiCorp, an Oregon corporation, is to become a wholly-owned indirect subsidiary of ScottishPower plc (ScottishPower), a public limited company incorporated under the laws of Scotland. ScottishPower owns and operates electric generation, transmission, and distribution assets in Scotland. In addition to other subsidiaries, it owns an electric distribution company serving customers in northwest England and north Wales. The application states that ScottishPower is among the 25 largest electric utilities in the world measured in terms of market capitalization.

As a result of the proposed merger, PacifiCorp is to become owned directly by NA General Partnership, which is a Nevada general partnership of ScottishPower NA 1 Limited and ScottishPower NA 2 Limited, both of which are subsidiaries of ScottishPower incorporated under the laws of Scotland. ScottishPower NA 1 Limited, ScottishPower NA 2 Limited, and NA General Partnership are all special purpose entities formed for the purpose of consummating the proposed transaction. The transaction has been structured so that, after the merger, PacifiCorp will continue as a U.S. corporation, domiciled in the United States and subject to all

applicable U.S. laws. Also, New ScottishPower plc, which will be the newly-formed parent of ScottishPower incorporated under the laws of Scotland, will register as a public utility holding company under the Public Utility Holding Company Act of 1935 (PUHCA).

PacifiCorp will continue to be a licensee for its ownership interest in Trojan, with no change in the direct ownership of its interest. An indirect transfer of control of the license for Trojan to the extent held by PacifiCorp to ScottishPower will occur as a result of the proposed merger. As a result of a planned amendment to the Ownership Agreement for Trojan among its three owners at the time of the merger, PacifiCorp's 2.5 percent voting rights on the Engineering and Operating Committees for Trojan will be eliminated. The primary remaining obligation of PacifiCorp with respect to Trojan will be to contribute to decommissioning funding. The application states that PacifiCorp will continue to collect funds for its 2.5 percent share of Trojan's decommissioning costs through retail rates and that the proposed merger will not have any negative effects on PacifiCorp's fulfillment of its decommissioning obligations.

Pursuant to 10 CFR 50.80, no license shall be transferred, directly or indirectly, through the transfer of control of the license, unless the Commission shall give its consent in writing. Such action is contingent upon the Commission's determination in indirect transfer cases that the underlying transaction will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

2.0 FINANCIAL QUALIFICATIONS ANALYSIS

Following the proposed merger, PacifiCorp will maintain its current ownership in Trojan and will continue to be an electric utility as defined in 10 CFR 50.2, with its rates authorized by seven State public utility commissions and the Federal Energy Regulatory Commission (FERC). Under the terms of the merger, PacifiCorp will continue to be responsible for providing funds to decommission its portion of Trojan. The application states that PacifiCorp's rate sources for decommissioning funding for Trojan are already in place and will not be affected by the merger and that PacifiCorp's ongoing funding of the Trojan decommissioning trust fund also will not be affected by the merger. As an electric utility, PacifiCorp is exempt from further financial qualifications review, pursuant to 10 CFR 50.33(f).

However, in view of the NRC's concern that corporate restructuring (involving either a direct or an indirect transfer of control) can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plant, the NRC's practice has been to condition license transfer approvals upon a requirement that the licensee not transfer significant assets from the licensee to an affiliate without first 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:

PacifiCorp 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 PacifiCorp to its direct or indirect 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 PacifiCorp's consolidated net utility plant, as recorded on its books of account.

In consideration of the foregoing, the staff concludes the proposed merger and indirect license transfer will not adversely affect the financial qualifications of PacifiCorp.

3.0 TECHNICAL QUALIFICATIONS

The application states that the "proposed transaction involves no change to the technical personnel of PGE responsible for operating and maintaining Trojan. Therefore, the technical qualifications of PGE to carry out its responsibilities under the Operating License will remain unchanged and will not be affected by the transaction." Furthermore, PacifiCorp's current right to appoint representatives to the Engineering and Operating Committees for Trojan and its right to visit or enter the Trojan plant site will be eliminated as a result of the planned amendment to the Ownership Agreement, thereby reserving those rights only to the other two owners. The staff concludes the proposed merger and indirect license transfer will not affect the technical qualifications of PGE to perform its obligations under the license.

4.0 ANTITRUST REVIEW

The Atomic Energy Act (AEA) does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). Therefore, since the transfer application postdates the issuance of the Trojan operating license, no antitrust review is required or authorized.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

5.1 Background

Section 103d of the AEA prohibits the Commission from issuing a license for a nuclear power plant under Section 103 to "any 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 Commission's regulations at 10 CFR 50.38 contain virtually identical language to implement this prohibition.

The issue addressed in this section is whether, in the NRC staff's view, the merger of PacifiCorp and ScottishPower will cause PacifiCorp to be owned, controlled, or dominated by foreign interests such that the foreign ownership and control prohibition of the AEA would be violated.

The Commission has approved a Standard Review Plan (SRP) to document the process that the staff uses to analyze whether an applicant is owned, controlled, or dominated by foreign interests within the meaning of Section 103d. The staff has used this SRP as guidance for

evaluating the foreign ownership considerations of the proposed merger of PacifiCorp and ScottishPower.

5.2 Organization of NA General Partnership and New ScottishPower

On December 6, 1998, ScottishPower, New ScottishPower, NA General Partnership, and PacifiCorp entered into an Agreement and Plan of Merger which was later amended and restated on February 23, 1999 (the later agreement is referred to as the "Agreement"). In accordance with this Agreement, upon the closing of the proposed merger, a wholly-owned indirect subsidiary of ScottishPower ("Merger Sub") will merge with and into PacifiCorp, with PacifiCorp being the surviving entity from that merger. NA General Partnership, a Nevada general partnership indirectly wholly owned by ScottishPower, holds all of the outstanding common stock of Merger Sub, an Oregon corporation. By virtue of the merger, PacifiCorp will remain a U.S. corporation while becoming a wholly-owned indirect subsidiary of ScottishPower.

Direct ownership of PacifiCorp will remain with NA General Partnership, a United States general partnership of ScottishPower NA 1 Limited and ScottishPower NA 2 Limited, which are both subsidiaries of ScottishPower. After the merger, New ScottishPower, a Scottish public limited company, will become a registered holding company and the parent of ScottishPower, i.e., ScottishPower will become a wholly-owned subsidiary of New ScottishPower. The supplement lists both the current and the anticipated (after the merger) directors of the New ScottishPower board, all of which are citizens of either the United States or the United Kingdom. Also, the five current directors of ScottishPower NA 1 Limited and ScottishPower NA 2 Limited are citizens of the United Kingdom, and they also will be the directors after the merger. Following the merger, the PacifiCorp board may comprise U.S. or U.K. citizens.

5.3 Information Provided and Measures Proposed to Address Foreign Control Concerns

PacifiCorp has provided the information required by 10 CFR 50.33(d) and has provided additional information in its application and its supplement on which the staff concludes that PacifiCorp and ScottishPower have taken, or have committed to take, adequate mitigating steps to ensure that PacifiCorp will not be owned, controlled, or dominated by an alien, foreign corporation, or foreign government for the purposes of the AEA and the NRC's regulations, notwithstanding ScottishPower's proposed "ownership" of PacifiCorp in the ordinary sense. The rest of Section 5.3 provides detailed information about the measures proposed to negate foreign control over PacifiCorp with respect to its control of its minority ownership interest in Trojan.

Even though PacifiCorp will become an indirect subsidiary of ScottishPower, the negotiation plan set forth in the application is designed to prevent the direct or indirect transfer of control to ScottishPower or foreign persons over PacifiCorp's nuclear activities regarding Trojan. The plan's focus is on the establishment of a Special Nuclear Committee (also referred to as "Committee") of the PacifiCorp Board of Directors, as set forth in the amended Bylaws to be adopted for PacifiCorp. The Committee will consist of at least three PacifiCorp Board members who are U.S. citizens elected to the Committee by the full PacifiCorp Board. After reviewing the stated purpose and the design of the Committee, the NRC staff has concluded that it has been effectively designed to have primary authority over nuclear issues of PacifiCorp so that foreign

interests cannot control PacifiCorp's interest in Trojan. Much of the remainder of this section describes key features of the Committee which helped the staff reach this conclusion.

The Committee will report to the PacifiCorp Board of Directors on a quarterly basis, but for informational purposes only. The application describes the authority of the Committee as follows: except as otherwise provided in the three exceptions stated at the end of this paragraph, the Committee "shall have sole discretion and decision-making authority on behalf of the Company as to all matters involving any interests that the Company may hold, now or in the future, in any nuclear power facility, whether such ownership interest is direct or indirect." There will be, however, three exceptions to these matters in which the full PacifiCorp Board of Directors (which may include citizens of the United Kingdom)¹ shall be authorized to act on behalf of PacifiCorp, after consultation with the Committee. These are as follows:

1. The right to decide to sell, lease, or otherwise dispose of PacifiCorp's interest in the facility.
2. The right to authorize and determine the budget related to the facility; and
3. The right to take any action which is ordered by the NRC or any other agency or court of competent jurisdiction.

PacifiCorp states that these three exceptions are rights that are essential to protect the economic and legal interests of ScottishPower. The Committee is designed so that, with the exception of the three types of decisions reserved to the full PacifiCorp Board, the Committee should have complete independence from direct foreign influence and it will have no obligation to act in accordance with directives of the full PacifiCorp Board or of any foreign entity. Implementation of Board decisions on exceptions one and three above require approval by the NRC and/or other U.S. governmental entities. In any event, neither the full PacifiCorp Board nor the Committee will have any role in operations or engineering regarding Trojan since, as stated earlier, PacifiCorp's 2.5 percent voting rights on the Engineering and Operating Committees for Trojan will be eliminated in connection with the merger.

PacifiCorp has taken steps to avoid any indirect foreign influences that might affect the Committee. The amended Bylaws will require that a majority of Committee members at all times be made up of Independent Directors, which are directors who are not current or past employees of PacifiCorp or any affiliated companies, including New ScottishPower and its subsidiaries. The application states that this will be done so the Independent Directors cannot be influenced by PacifiCorp or ScottishPower through an employment relationship or in any other manner. Also, each member will be appointed to a fixed term and may be removed during that term only for specific causes. This step is designed to prevent foreign citizens from threatening to remove a member for taking actions which may be contrary to their interests. Any member leaving the Committee can only be replaced by a U.S. citizen. Members of the

¹ The supplement states that, as of September 20, 1999, the number and identity of the PacifiCorp directors following the merger have not been determined, and it is expected that the directors of the post-merger PacifiCorp board will be citizens of the United States or the United Kingdom.

Committee will be both empowered and required to report to the NRC any action by a foreign citizen believed to be designed to unduly influence his or her behavior to the detriment of the national interest. Finally, PacifiCorp will extend to each Committee member (presumably if not already covered by operation of law) the protection afforded by the NRC's regulations contained in 10 CFR 50.7, which prevent any licensee from discriminating against any employee for engaging in "protected activity," such as informing government agencies as to a possible non-compliance with the terms of a license or statute.

As the SRP indicates, the Commission will give the foreign control prohibition an orientation to the common defense and security. PacifiCorp's 2.5% minority ownership interest in Trojan does not give it any rights to control or even influence the operation of the facility, nor to have access to, or possession of, any SNM or Restricted Data. Furthermore, the application states that there is nothing secret about Trojan's technology. Trojan's pressurized water reactor employed Westinghouse materials and technology, using commonly available technology. The application states that the only SNM at Trojan is that which was produced and remains bound with highly retroactive spent fuel, which cannot be processed or separated under the license. Also, Trojan is permanently shut down and the supplement states that Trojan's reactor was sent to the Hanford Nuclear Reservation for burial in August 1999. In light of the foregoing, even though the negation plan does not necessarily preclude foreign citizens from potentially having some decision-making authority over the three limited situations involving Trojan discussed above (e.g., whether to sell the reactor interest), there is a reasonable basis to conclude that such foreign involvement would pose no threat to the common defense and security given PacifiCorp's non-existent role concerning operation of the facility or access to SNM or Restricted Data.

5.4 Staff Conclusions with Respect to Foreign Ownership and Control Considerations

The staff has considered guidance contained in the SRP cited herein and the detailed information from the applicant with respect to foreign ownership, control, and domination. The staff has placed substantial weight on the significant safeguards built into the design of the PacifiCorp negation plan. As a result, the staff concludes that the indirect transfer of the license, with respect to PacifiCorp's 2.5 percent minority ownership interest in Trojan, to ScottishPower would not violate the prohibitions in the AEA pertaining to foreign ownership, control, or domination, provided that PacifiCorp is subject to the following conditions. The staff believes that these conditions are consistent with Commission precedent.

1. No later than the time the proposed merger with ScottishPower is consummated, PacifiCorp shall establish and make operational a Special Nuclear Committee, as described in the application, having the composition, authority, responsibilities, and obligations specified in the application. No material changes with respect to the Special Nuclear Committee may be made without the prior written consent of the Director, Office of Nuclear Reactor Regulation. The foregoing provisions may be modified by the Commission upon application and for good cause shown.
2. The Special Nuclear Committee shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of PacifiCorp with respect to the Trojan license are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States.

6.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the indirect transfer of a license by the NRC. Accordingly, the action involved meets the 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 approval of the application.

7.0 CONCLUSIONS

In view of the foregoing discussion, the staff concludes that the proposed indirect transfer of the operating license for Trojan to ScottishPower with respect to PacifiCorp's 2.5% ownership interest in Trojan will not contravene the prohibition against foreign ownership, control, or domination with the imposition of the conditions described in this Safety Evaluation. Also, the staff finds no changes expected from this indirect transfer that would adversely impact either the technical qualifications of the Trojan management and staff to continue the decommissioning of that facility or the financial qualifications of PacifiCorp with respect to its ongoing provision of its share of funds for the decommissioning of Trojan. Accordingly, the staff concludes that PacifiCorp will remain qualified to hold the license with respect to its 2.5% ownership interest in Trojan following the proposed merger of PacifiCorp and ScottishPower, and that the indirect transfer of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions set forth herein.

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