



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
FOR THE LICENSE TRANSFER FROM MONTAUP ELECTRIC COMPANY
TO LITTLE BAY POWER CORPORATION
AND APPROVAL OF CONFORMING AMENDMENT
SEABROOK STATION UNIT 1
DOCKET NO. 50-443

1.0 BACKGROUND

By letter dated September 29, 1998, North Atlantic Energy Service Corporation (North Atlantic) transmitted an application by Montaup Electric Company (Montaup) and Little Bay Power Corporation (Little Bay), pursuant to 10 CFR 50.80, requesting the Commission's consent to the transfer of Montaup's interest in the operating license for Seabrook Station Unit 1 (Seabrook) to Little Bay. On March 8, 1999, updated financial projections were submitted by Little Bay and on April 7, 1999, Little Bay submitted clarifications to the new projections. The September 29, 1998 letter also transmitted an application for a conforming license amendment to reflect the proposed transfer. The March 8, and April 7, 1999, submittals did not expand the scope of the application as noticed in the *Federal Register*. The application and all supplements will hereafter be referred to as "the application."

Montaup, a wholly owned subsidiary of Eastern Edison Company (EastEd), which, in turn, is a wholly owned subsidiary of Eastern Utilities Associates, is an approximately 2.9-percent owner of Seabrook. Little Bay is a wholly owned subsidiary of BayCorp Holdings, Ltd. (BayCorp), which is the holding company that also owns Great Bay Power Corporation (Great Bay), which owns approximately 12.1 percent of Seabrook. The remaining 85 percent is owned by nine other separate entities, of which North Atlantic Energy Corporation is the single largest owner. North Atlantic is the exclusive operator of Seabrook and is itself proportionally owned by the 11 current Seabrook owners.

By an agreement between Montaup and Great Bay dated June 24, 1998, Montaup's interest in Seabrook will be sold to Little Bay for \$3.2 million (subject to adjustments for certain assets and liabilities transferred at closing). As part of the agreement, Montaup will transfer to Little Bay its interest in the Seabrook Decommissioning Trust Fund and prepay the balance of the decommissioning obligations for its 2.9-percent ownership interest.

2.0 FINANCIAL AND TECHNICAL QUALIFICATIONS

On the basis of the information submitted in the application, the staff finds that Little Bay is financially qualified to contribute appropriately to the operations and eventual decommissioning of Seabrook with respect to the 2.9 percent interest in Seabrook to be acquired. Little Bay will operate as a separate, wholly owned subsidiary of BayCorp. It will sell the power generated from the 2.9-percent ownership interest in Seabrook to Great Bay on a "take or pay" basis, under which Great Bay will be obligated to pay all of Little Bay's costs associated with its prospective 2.9-percent ownership interest in Seabrook. Little Bay will be an exempt wholesale generator engaged exclusively in the sale of electric power at wholesale and will be regulated, in certain respects, by the Federal Energy Regulatory Commission.

As a non-electric utility, Little Bay is subject to a financial qualifications review with respect to its proposed ownership share of Seabrook. Little Bay is a newly formed entity and must also include information required in 10 CFR 50.33(f)(3) in its application, such that it discloses its legal and financial relationship with its owners. In addition, Little Bay must disclose "its financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur."

Little Bay has met the requirements of 10 CFR 50.33(f)(3) by demonstrating that it is a wholly owned subsidiary of BayCorp Holdings, and by providing a 5-year projection of revenues and expenses pertaining to its proposed 2.9-percent share of Seabrook. These projections are attributable to Montaup's 2.9-percent ownership share based on the official "Seabrook 1998 Budget and 1999 - 2002 Forecast", for which Little Bay will be obligated to pay its share for the operation of the Seabrook facility for the next 5 years under the Joint Ownership Agreement. These costs include plant operations and maintenance, capital additions, and nuclear fuel for the Seabrook plant. The source of funds to pay for these costs will be the sale of power generated by Little Bay's 2.9-percent prospective ownership share of Seabrook. There do not appear to be any other contractual obligations that Little Bay must satisfy as a wholly-owned subsidiary of BayCorp pursuant to 10 CFR 50.33(f)(3)(ii). Little Bay will receive its start up capital from BayCorp. The staff has found that the 5-year projections appear to be reasonably in line with the recent financial performance of BayCorp Holdings, Ltd., which is also the parent company of Great Bay Power Corporation. Great Bay Power Corporation currently owns approximately 140 MW. After the proposed transfer, BayCorp Holdings, Ltd. will control approximately 174 MW through its two subsidiaries.

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety.

As stated earlier, as part of the agreement between Montaup and Little Bay, Montaup will transfer to Little Bay its interest in the Seabrook Decommissioning Trust Fund and prepay the balance of the decommissioning obligations for its current 2.9-percent ownership interest. Montaup will prepay the decommissioning obligations attributable to its 2.9-percent interest by depositing \$11.8 million into the Seabrook Decommissioning Trust Fund, which is maintained and administered by the State of New Hampshire under its law, as discussed below. This amount is expected to grow by the year 2026 (the current expiration of the Seabrook operating license) to the amount required to decommission Montaup's 2.9-percent ownership share of

Seabrook. This prepaid decommissioning fund, coupled with a projected real earnings rate on the deposit of 1.73 percent per year, complies with 10 CFR 50.75(e)(2)(iii) as another guarantee method. The staff has calculated that as of December 31, 1998, the minimum required amount for prepaying the Seabrook Decommissioning Trust Fund pursuant to 10 CFR 50.75(c), is approximately \$8.4 million. Any additional decommissioning financial requirements after the transfer will be provided by Little Bay. Therefore, at this time, the stated amount of \$11.8 million pledged by Montaup and Little Bay as prepayment for the Seabrook Decommissioning Trust Fund is acceptable.

The Seabrook Decommissioning Trust Fund is administered by the Treasurer of the State of New Hampshire, pursuant to New Hampshire Statute NHRSP §162-F:20. The amount of funding required to be in the decommissioning trust fund and the rate of payment into the fund are determined by the New Hampshire Nuclear Decommissioning Finance Committee. NHRSP §§162-F:19 and 21.

The staff concludes that reasonable assurance of decommissioning funding will be provided by the method proposed by Little Bay, provided that \$11.8 million is provided in the Seabrook Decommissioning Trust Fund administered by the Treasurer of New Hampshire in accordance with the statutory scheme of New Hampshire. Accordingly, consent to the proposed transfer of the Seabrook license should be subject to the following decommissioning trust fund condition:

For purposes of ensuring public health and safety, Little Bay shall provide decommissioning funding assurance of no less than \$11.8 million, after payment of any taxes, in the Seabrook Decommissioning Trust Fund maintained and administered by the State of New Hampshire under its applicable law upon the transfer of Montaup's interest in Seabrook to Little Bay.

With respect to technical qualifications, the proposed sale will not effect any change in the technical qualifications of the licensed operator, North Atlantic, and will not effect any change in the responsibilities of North Atlantic as set forth in the license. In addition, no change to either the required organization or personnel responsible for the operation of Seabrook has been proposed in the transfer application or the requested conforming amendment.

3.0 ANTITRUST REVIEW

The Atomic Energy Act 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___, slip op. (June 18, 1999). Therefore, since the transfer application post-dates the issuance of the Seabrook operating license, no antitrust review is required or authorized.

4.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Little Bay, according to the application, is a corporation organized under New Hampshire law, and its principal place of business is Portsmouth, New Hampshire. In addition, its directors and principal officers are all U.S. citizens. The application states that Little Bay is not owned, controlled, or dominated by an alien, foreign corporation, or foreign government. The staff does not know or have any reason to believe otherwise.

5.0 CONFORMING AMENDMENT

5.1 INTRODUCTION

As stated earlier, by letter dated September 29, 1998, North Atlantic submitted a request for changes to the Seabrook Station facility operating license. The requested changes would remove Montaup from the license and add Little Bay in its place.

5.2 EVALUATION

The purpose of this license amendment is to conform the license to accurately reflect the proposed transfer. The proposed amendment involves only one change to the list of the Seabrook Station's owners on page one of the license, deleting Montaup and adding Little Bay. The staff concludes that the amendment presents no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

5.3 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 operation in the proposed manner, (2) 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.

6.0 STATE CONSULTATION

In accordance with the Commission's regulations, the New Hampshire and Massachusetts State officials were notified of the proposed issuance of the amendment. The State officials had no comments.

7.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of a license issued by the NRC and approval of a conforming amendment. Accordingly, the action involved meets 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 approval of the application.

8.0 CONCLUSION

In view of the foregoing, the NRC staff concludes that Little Bay is qualified to hold the license for Seabrook, to the extent now held by Montaup, and that the transfer of the license, as described above, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

9.0 JOINT SEABROOK OWNER COMMENTS

Pursuant to the notice of the opportunity to submit written comments concerning the application for approval published in the *Federal Register* on December 14, 1998 (63 FR 68801), Massachusetts Municipal Wholesale Electric Company (MMWEC) filed written comments.

MMWEC commented that: "The proposed transfer [to Little Bay] clearly would result in a lessening of financial qualifications with respect to the ownership and licensing of Montaup's share and would increase commensurately the financial risk to other joint owners, including MMWEC." MMWEC's comments also supported a motion filed by NEP in connection with its response to the notice of the application to condition the transfer on a requirement that Montaup remain contingently financially responsible, if the effect would be to extend the existing rate protections associated with Montaup's current ownership of Seabrook in the event of a default by Little Bay. Absent such a condition, MMWEC requested that the Commission carefully consider the potential financial risk to the other joint owners of Seabrook as a result of the license transfer to Little Bay.

With respect to MMWEC's comments, the staff has concluded that Little Bay is financially qualified to hold the license for Seabrook, to the extent now held by Montaup, and that the transfer of the license, as described above, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. Therefore, the license condition requested by MMWEC is not necessary for the Commission to make its required findings. Accordingly, any alleged change in the potential financial risk to the other joint owners will not be given any further consideration.

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