



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
PROPOSED TRANSFER OF CLINTON POWER STATION OPERATING LICENSE
FROM ILLINOIS POWER COMPANY
TO AMERGEN ENERGY COMPANY, LLC

DOCKET NO. 50-461

1.0 INTRODUCTION

By application dated July 23, 1999, AmerGen Energy Company, LLC (AmerGen) and Illinois Power Company (IP) requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the transfer of Facility Operating License No. NPF-62 for Clinton Power Station (CPS) from IP to AmerGen. AmerGen and IP also requested NRC approval of an administrative amendment to conform the Operating License to reflect the proposed transfer. The proposed amendment would not include existing antitrust license conditions that were imposed against IP. The July 23, 1999, application was supplemented on July 30, August 9, and August 20, 1999, and with responses to a September 17, 1999, request for additional information on October 7 and 11, 1999. The supplemental information did not expand the scope of the application as originally noticed in the *Federal Register*.

AmerGen and IP requested that the NRC consent to this transfer and authorize AmerGen to possess, use, and operate CPS under the same conditions and authorizations included in the existing Operating License, except as modified as requested by their application. According to the applicants, no physical changes will be made to CPS as a result of this transfer, and there will be no significant change in the day-to-day operations of CPS. Currently, IP is the 100-percent owner and operator of CPS. Following the proposed sale, AmerGen would become the sole licensed owner and operator of CPS.

2.0 BACKGROUND

AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States, with its principal offices located in Wayne, Pennsylvania. AmerGen is organized under the laws of the State of Delaware pursuant to the AmerGen Limited Liability Company Agreement among PECO Energy Company (PECO), a Pennsylvania company; British Energy, plc (BE plc), a Scottish corporation; and British Energy, Inc. (BE, Inc.), a Delaware corporation that is a wholly owned subsidiary of BE plc. BE plc is a party to the AmerGen Limited Liability Company Agreement, but only PECO and BE, Inc., are members of AmerGen, with each holding a 50-percent ownership interest in AmerGen.

NOTE: PROPRIETARY INFORMATION IS DENOTED BY SHADED TEXT ON PAGES 4 AND 5

In connection with the ongoing restructuring of the electric utility industry in the State of Illinois, IP decided to withdraw from the nuclear business and sell or shut down CPS. On June 30, 1999, IP and AmerGen executed the CPS Asset Purchase Agreement (CPS Agreement), under which IP will sell its interests in CPS to AmerGen. IP and AmerGen also executed certain ancillary agreements, including a Power Purchase Agreement (Enclosure 7 of the July 23, 1999, application).

The applicants state that upon closing of the transaction, tentatively scheduled for December 1999, the following events will occur, as disclosed in the CPS Agreement and Power Purchase Agreement:

- (1) AmerGen will assume all right, title, and interest in and to CPS, including all IP buildings, equipment, spare parts, fixtures, inventory, documents, records, assignable contracts, used and spent nuclear fuel, other licensed materials at CPS and other property necessary for its operation and maintenance, but excluding certain switchyard and transmission facilities and certain other personal property and equipment; AmerGen also will assume all responsibility for the safe operation, maintenance, and eventual decommissioning of CPS.
- (2) The approximately 950 employees located at CPS involved in the operation and maintenance of CPS will become employees of AmerGen and continue to perform these functions for AmerGen.
- (3) AmerGen will have the right to offer to employ selected IP corporate support staff located at IP's Decatur, Illinois offices.
- (4) AmerGen will have the right to contract for any necessary transmission service under IP's Open Access Transmission Tariff and for backup power to the site consistent with NRC requirements.
- (5) IP will purchase 75% of the capacity and energy from CPS through AmerGen starting on the Closing Date through the year 2004.
- (6) IP will make certain additional contributions to the existing CPS Decommissioning Trust Fund and will transfer the CPS Decommissioning Trust Fund to AmerGen. AmerGen will assure that the fair market value of the funds upon closing will not be less than \$210 million. AmerGen asserts that the trust fund will meet the requirements for the prepayment method of decommissioning funding assurance pursuant to 10 CFR 50.75(e)(1)(i), because this amount exceeds the 10 CFR 50.75 (b) and (c) minimum regulatory requirements for radiological decommissioning costs for CPS when a 2% annual real rate of return is credited until the end of CPS's Operating License.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

AmerGen submits in its application that "it qualifies as an electric utility for purposes of the exemption from demonstrating financial qualifications" pursuant to 10 CFR 50.33(f). AmerGen states that it will sell power to IP through 2004 under terms of a Power Purchase Agreement subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). Thus,

throughout the duration of this Power Purchase Agreement, AmerGen states it will be a "public utility" with rates subject to regulation by FERC under the Federal Power Act and believes also that it should be considered an "electric utility" within the meaning of the term's definition in 10 CFR 50.2 for purposes of 10 CFR 50.33(f). After expiration of the Power Purchase Agreement, AmerGen states that it intends to recover its cost of generating electricity by selling power at market-based rates acceptable to FERC.

While the staff does not find that AmerGen qualifies as an "electric utility" under 10 CFR 50.2, the staff finds that AmerGen meets the financial qualifications requirements for a nonelectric utility pursuant to 10 CFR 50.33(f).

AmerGen, as both a newly formed entity and a nonelectric utility applying to own and to operate a nuclear power plant, is subject to a more detailed financial qualifications review by the NRC than an established electric utility. Specifically, AmerGen must meet the requirements of 10 CFR 50.33(f) by providing information that shows the following:

- (1) As a nonelectric utility applicant for an operating license, it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. Also, it must submit estimated total annual operating costs for the first 5 years of facility operation and indicate the source(s) of funds to cover these costs.
- (2) As a newly formed entity organized primarily for the purpose of operating a nuclear power plant, it must show (a) the legal and financial relationships it has or proposes to have with its stockholders or owners, (b) its financial ability to meet any contractual obligation to the entity which it has incurred or proposes to incur, and (c) any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

Also, 10 CFR 50.33(k)(1) requires that AmerGen must provide information as described in 10 CFR 50.75 indicating reasonable assurance that funds will be available to decommission the facility. AmerGen's proposals for decommissioning funding assurance for CPS are discussed in Section 4.0 of this safety evaluation.

In support of AmerGen's claim that it has reasonable assurance of obtaining the necessary funds to operate CPS, the application contains a proprietary version of a CPS projected income statement for the period from 2000 to 2004. This projected income statement is based on assumptions developed by AmerGen. The application shows that the projected operating revenue for CPS is a sufficient source of funds to meet its ongoing operating expenses and, therefore, should satisfy this aspect of NRC financial qualification requirements. (See the July 23, 1999, application, Proprietary Enclosure 6A.)

In AmerGen's income statement, some significant year-to-year variations occur within each of the categories of operating revenues, operating expenses, and net income, primarily because of the impact of planned outages. But generally, AmerGen's forecast for revenue and expenses leaves net income in an upward trend over the 5 years provided.

SUMMARY OF PROJECTED INCOME STATEMENTS
\$ THOUSANDS PER YEAR

	FY2000	FY2001	FY2002	FY2003	FY2004
Total Revenue	\$	\$	\$	\$	\$
Total Operating Expense	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Operating Profit	\$	\$	\$	\$	\$
Interest Exp & Taxes	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Net Income	\$	\$	\$	\$	\$

AmerGen states that this projected income statement reflects conservative assumptions with respect to both projected total revenues and total projected operating expenses. AmerGen also states that it reasonably anticipates that actual performance will be more favorable. During the first 5 years of AmerGen's operation of CPS (from 2000 to 2004), the majority of AmerGen's income from CPS capacity and energy sales will come from IP. Under the Power Purchase Agreement, IP will purchase 75 percent of CPS' capacity and energy from AmerGen until December 31, 2004, at rates stipulated in the Power Purchase Agreement. The remaining capacity and energy during that time will be sold at market-based rates, as will all capacity and energy after December 31, 2004. (See the Power Purchase Agreement.) Moreover, PECO and BE, Inc., are making certain financial commitments to AmerGen to provide funds to cover operating expenses as necessary to maintain the safety of CPS during any periods in which revenues from capacity and energy sales might not cover the operating expenses.

The staff found that projections of operating expenses are consistent with CPS's historical operating costs. However, the staff believes that one line item requires more extensive review: the projected revenues from 2000-2004 of the income statements. Projected revenues are the product of expected megawatt-hour sales times AmerGen's market price assumptions as stated in the supporting schedules for the income statements. Projected revenues and net income are more than adequate to cover expected CPS expenses and to provide AmerGen's owners with favorable returns on their expected investment in the facility. However, in a competitive market, the possibility exists that prices, revenue, and net income levels could be significantly lower than anticipated by AmerGen during some portions of the 5-year projection period and that this could mean less funding would be available for CPS operations.

The staff's analysis focuses on how sensitive the AmerGen revenue forecasts are to lower market prices for the purpose of establishing a projected market price "floor" below which AmerGen would begin to have difficulty covering its CPS operating expenses by relying on CPS revenues. This is done by determining the average annual simple growth rate for the CPS market price, which would produce virtually zero net income (or a break-even level) over the period from 2000 to 2004, and this growth rate is compared to the higher average annual

growth rates in the market prices in AmerGen's forecast. If AmerGen were to experience this lower (or floor) level of prices for an extended period, AmerGen or its owners might decide to continue operating CPS without profits or, at a certain point, to cease CPS operations permanently.

The base market price in the AmerGen forecast is approximately _____ cents per kilowatt-hour (kWh) in the year 2000, which increases at a simple growth rate averaging about _____ percent per year.

The next step in the staff's analysis is to try to determine how reasonable or probable these various growth rates might be for the forecast period 2000-2013. Forecasts of electric rates in competitive markets are subject to many unknown factors that make such predictions highly speculative at best, but the reasonableness of various growth rates may be assessed by considering various factors that could provide some indication of future electricity prices. For example, recent trends in electricity prices could allow some inferences as to how such prices might continue to change in the more competitive future environment expected in the electric power industry.

Data on U.S. retail electricity prices from the Energy Information Administration indicate that the overall price (all sales categories) has declined from its highest level in 1993 (at _____ cents per kWh) to _____ cents per kWh by 1997. The average retail price for the industrial category declined from _____ cents per kWh in 1993 to _____ cents per kWh in 1997. Considering this downward trend in retail prices and increasing competition in the electric power industry, the general trend of electricity prices at the retail level is likely to continue downward in the near term.

However, it is difficult to predict the direction of prices likely to be paid for CPS power in its market area. AmerGen expects to be selling power primarily at market-based prices after the year 2004, and these prices will be a mix of competitively determined retail and wholesale prices. Also, trends in retail and wholesale electricity prices vary from one region to another, so AmerGen's prices within its market area may not follow national trends. Thus, the recent downward trend in national retail prices may not necessarily produce a significant downward influence on CPS prices. The North American Electric Reliability Council (NERC) projects that capacity margins will somewhat increase in the Mid-American Interconnected Network, Inc. (MAIN), from 1998 to 2007, the region in which CPS operates. (See NERC's Reliability Assessment 1998-2007, October 1998, page 11.) However, capacity margins from 1998 to 2007 will be declining in the areas surrounding MAIN [such as the East Central Area Reliability Coordination Agreement, the Southeast Electric Reliability Council, and the Mid-Continent Area Power Pool], such that there would be a potential for sales from MAIN to adjoining regions.

After reviewing several forecasts of U.S. electricity prices and other relevant information (such as a forecast of regional capacity margins), the staff concludes that attempting to forecast the growth rate, or even the direction of change, for market-based prices in the CPS market area is too speculative to be useful for its contingency analysis. But the staff's most important conclusion from this analysis is that, even if prices for CPS power were to change at an average annual rate much lower than that anticipated by AmerGen, this does not preclude AmerGen from operating and maintaining CPS in a manner that would protect the public health and safety.

The applicant states that AmerGen's owners have committed to provide additional funds to cover operating expenses as necessary to maintain adequate safety conditions during any periods in which operating revenues from CPS might not cover operating expenses. Also, if CPS profits were inadequate for the owners, they could decide to cease CPS operations; if this were to occur, AmerGen states that it would have the right to obtain adequate funding from its owners to ensure safe conditions at CPS in a transition to decommissioning (as is noted in the application and as is discussed in more detail below).

The staff has concluded that the projected income statement shows that the anticipated revenues from sales of capacity and energy from CPS provide reasonable assurance of an adequate source of funds to meet CPS's ongoing operating expenses.

In the July 23, 1999, application, AmerGen provided a projected opening balance sheet showing its anticipated assets, liabilities, and capital structure related to CPS as of the Closing Date. (See the July 23, 1999, application, Proprietary Enclosure 6A.) AmerGen expects that by the Closing Date, its owners will make capital contributions sufficient to cover the cash purchase price (as defined in Section 3.2 of the CPS Agreement). Beyond this initial capital contribution from its owners, AmerGen states that its revenues from the sale of electricity generated at CPS will provide AmerGen with working capital on an ongoing basis.

AmerGen has proposed that its financial qualifications be evaluated in light of its planned operation of multiple units at multiple sites. As stated above, PECO and BE, Inc., entered into additional financial arrangements that provide funds to meet operating expenses, if revenue expectations should fall short. Previously, PECO and BE, Inc., each entered into letter agreements dated December 3, 1998, and November 5, 1998, respectively, in which they committed, subject to the terms of their respective agreements, to provide their share of funds to AmerGen to ensure that AmerGen will have sufficient funds available to meet its operating expenses for the Three Mile Island Unit 1 nuclear plant (TMI-1). (AmerGen applied to transfer TMI-1's Operating License on December 3, 1998.) Under the terms of these agreements, AmerGen has access to \$65 million. Based upon its conservative average operating cost projections for the 5 years following the transfer of CPS, AmerGen projects an average operating cost over a 6-month period for CPS of approximately \$80 million. Therefore, AmerGen has obtained additional funding from PECO and BE, Inc., which has supplemented the original TMI-1 Funding Agreements to increase the total amount of funds that will be made available to AmerGen from PECO and BE, Inc., to \$110 million and to make this funding arrangement applicable to each plant owned and operated by AmerGen. (See the July 23, 1999, application, Enclosure 9, hereafter referred to as the "Supplemental Agreements.")

Pursuant to the terms of the Supplemental Agreements, PECO and BE, Inc., each will provide funding to AmerGen at any time that the Management Committee of AmerGen determines that, in order to protect the public health and safety and/or to comply with NRC requirements, such funds are necessary to meet the ongoing operating expenses for any nuclear power plant in AmerGen's fleet, or such funds are necessary to safely maintain any such plant, provided, however, that the liability to provide funding under each agreement shall not exceed the lesser of (a) 50 percent of the total funding required by AmerGen from time-to-time pursuant to the letter agreements, or (b) the aggregate amount of \$55 million cumulatively over the life of the agreements. Pursuant to these agreements, AmerGen will be able to draw upon financial resources of up to \$110 million if such funds are necessary to meet its expenses and/or to meet its obligations to safely maintain any of the nuclear power plants owned and operated by

AmerGen. These Supplemental Agreements become effective upon the first nuclear reactor sold to AmerGen. The staff has reviewed the Supplemental Agreements. The staff finds that the availability of \$110 million, pursuant to these agreements, provides reasonable assurance that AmerGen will have sufficient funds for an outage lasting 6 months at CPS. However, although the staff finds that the availability of a combined amount of \$110 million provides reasonable assurance of sufficient funds for TMI-1 and CPS, the staff makes no finding regarding the sufficiency of such funds should AmerGen request that the funds be used to support the licensing of additional plants.

According to their terms, the Supplemental Agreements will remain irrevocable until such time as either (1) AmerGen has submitted to the NRC a written certification meeting the requirements of 10 CFR 50.4(b)(6)(8) and (9) that fuel has been permanently removed from all of the reactors owned by AmerGen (i.e., after AmerGen has determined to permanently cease operations at all of its reactors), or (2) the NRC has given its prior written consent to the discontinuance of the funding arrangements contemplated by the Supplemental Agreements. These funding arrangements are subject to the understanding that PECO or BE, Inc., shall have the right to demand that AmerGen permanently cease operations at any plant rather than use funds available under these agreements for continued operations, provided that, in such event, AmerGen shall nevertheless have the right to continue to obtain the funds necessary to ensure the safe and orderly shutdown of any such plant and to continue the safe maintenance of any such plant until AmerGen can certify to the NRC that the fuel has been permanently removed from the reactor vessel.

In its application to the NRC dated July 23, 1999, AmerGen states that it does not anticipate that it will ever need to draw upon the \$110 million commitment because it expects "that both PECO and BE plc will make adequate contributions to AmerGen, on an ongoing basis, necessary to assure AmerGen's ability to fund the ongoing operation and maintenance of all its nuclear power plants" (page 19 of the July 23, 1999, application). AmerGen also states that if it ever were forced to draw upon the \$110 million commitment, which would require specific findings in a vote of the AmerGen Management Committee, it would exercise care to ensure that it either maintain funds, or holds in reserve the right to draw upon funds, sufficient to ensure that AmerGen would be able to fund the transition to a safe shutdown. AmerGen states that it will inform the NRC in writing at any time that it draws upon the \$110 million commitment and that it recognizes that the NRC has authority to assure that adequate funds will remain available to fund the transition to safe shutdown, should a question arise regarding the availability of funds for such a purpose (page 20, *ibid*). All or some portion of AmerGen's earnings will be available for distribution to PECO and BE, Inc., in the years in which it has operating surpluses, and AmerGen will be able to use any carryover surpluses or obtain additional funds from PECO and BE, Inc., in years in which it needs to do so.

As noted earlier, a newly formed entity organized primarily for the purpose of operating a nuclear power plant must provide certain information about its legal and financial relationships with its stockholders or owners and about its financial ability to meet any contractual obligation to the entity that it has incurred or proposes to incur. AmerGen provided such information in conjunction with the application for the transfer of the TMI-1 Operating License, dated December 3, 1998, as supplemented on January 11, February 4, March 4, March 10 and March 15, 1999. The staff found the information sufficient to meet the requirements of the regulations. (See Safety Evaluation for the Transfer of Facility Operating License from General

Public Utilities Nuclear, Inc., et al. To AmerGen Energy Company, LLC and Approval of Conforming Amendment, Three Mile Island Nuclear Station, Unit 1, Docket No. 50-289, April 12, 1999).

On the basis of information contained in the application for the transfer of the CPS Operating License as cited above, the staff concludes that AmerGen has provided reasonable assurance of being able to obtain adequate funding to own CPS and to cover estimated operation costs for the period of the current CPS Operating License, as required by 10 CFR 50.33(f). In addition, pursuant to guidance in NUREG-1577, Rev. 1, AmerGen has provided guarantees of operating expenses in the event of an extended outage. However, to ensure that adequate funds are available as might be necessary to fund the transition to a safe shutdown, the NRC staff believes that the commitment stated in the application to allow AmerGen to draw up to \$110 million from PECO and BE plc should be made a condition of approval of the transfer of the Operating License and the Operating License itself, as follows:

AmerGen shall take no action to cause PECO or BE, Inc., to void, cancel, or diminish the \$110 million contingency commitment from PECO and BE plc, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen's ability to draw upon the commitment. Also, AmerGen shall inform the NRC in writing at any time that it draws upon the \$110 million commitment.

4.0 DECOMMISSIONING FUNDING ASSURANCE

A. Amount of Decommissioning Funds

Pursuant to 10 CFR 50.75(b), each power reactor licensee must certify that it will provide decommissioning funding assurance in an amount that may be more but not less than the formulas in 10 CFR 50.75(c)(1) and (2). These formulas are based on the size and type of the reactor and on cost escalation factors for labor, energy, and low-level waste (LLW) disposal costs. The LLW disposal cost factor is to be derived from the latest version of NUREG-1307, "Report on Waste Burial Charges," which is currently Revision 8. Revision 8 allows licensees a variety of methods by which they may estimate disposal costs of LLW, including disposition by waste vendors. (See, for example, page 6, Example 4, in Revision 8.) In Enclosure 11 to its application, AmerGen calculated the required funding using the formulas in 10 CFR 50.75(c) and Revision 8. On the basis of this calculation, AmerGen concludes that it currently must certify that it will provide at least \$347.88 million for CPS's eventual decommissioning to comply with the requirements of 10 CFR 50.75(b). The NRC staff has verified AmerGen's calculation and accepts this amount as accurate.

In its application for transfer of the CPS Operating License, AmerGen indicates that, as a condition of the sale, the current owner and operator, IP, has agreed to fund the decommissioning trust fund for a total of no less than \$210 million at the time the transfer occurs. In addition, IP will contribute \$5 million to the decommissioning trust fund annually for the 5 years following sale closure. This commitment is reflected in the "CPS Asset Purchase Agreement By and Between Illinois Power Company, as Seller, and AmerGen Energy Company, LLC, as Buyer," dated June 30, 1999. In addition, AmerGen will rely on earnings on the trust fund to accumulate at a real rate (i.e., after inflation and taxes) of 2 percent annually until the expiration of CPS's Operating License in 2026. The NRC's regulations at

10 CFR 50.75(e)(1)(i) allow licensees to take a credit of up to a 2-percent annual real rate of return on decommissioning trust funds on deposit when using the prepayment method of decommissioning funding assurance. This credit may be applied toward the current estimate of decommissioning funds needed for decommissioning at the time of permanent cessation of operations. At the time AmerGen expects CPS to permanently cease operations in 2026, this 2-percent credit would cause the decommissioning trust fund to grow to a range from \$356.7 million to \$396.7 million, depending on whether IP's five annual payments of \$5 million are included. Under either assumption, the total amount exceeds the current estimate of CPS's decommissioning costs based on the formulas in 10 CFR 50.75(c).

NRC Staff's Conclusion on Amount of Decommissioning Funds

The NRC staff concludes that AmerGen has complied with the requirements in 10 CFR 50.75(b) with respect to the amount of decommissioning funds that AmerGen must certify that it will provide. The amount that AmerGen proposes to have placed in CPS's decommissioning trust fund, combined with earnings on the trust fund calculated at a real rate of 2 percent annually, is greater than the approximately \$348 million that is required under the generic formulas in 10 CFR 50.75(c). Additionally, AmerGen will be required to adjust the amount required to be available for decommissioning funding on an annual basis, pursuant to 10 CFR 50.75(b).

To reflect AmerGen's commitment for decommissioning funds, the NRC staff concludes that the following should be a condition of approval of the transfer as well as a license condition:

AmerGen is required to provide decommissioning funding assurance of no less than \$210 million, after payment of any taxes, that will be deposited in the decommissioning trust fund for CPS at the time of CPS's transfer to AmerGen.

B. Decommissioning Funding Assurance Mechanism

Pursuant to 10 CFR 50.75(b), a reactor licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 CFR 50.75(e), determined to be acceptable by the NRC. The NRC has determined that the requirement to provide assurance of decommissioning funding is necessary to ensure the adequate protection of public health and safety. AmerGen has selected the prepayment method, coupled with an external trust fund, as provided for in 10 CFR 50.75(e)(1)(i). As noted previously, AmerGen is also relying on future earnings on the decommissioning trust as allowed in 10 CFR 50.75(e)(1)(i). The decommissioning trust fund will be transferred to AmerGen at the time that the CPS Operating License is transferred to AmerGen, notwithstanding tax treatment of the decommissioning trust fund transfer by the U.S. Internal Revenue Service.

The staff notes that, although the method of providing decommissioning funding assurance for CPS proposed by AmerGen complies with the requirements of 10 CFR 50.75, if CPS were required to permanently shut down prematurely, it would not have sufficient funds on hand to immediately dismantle CPS. (AmerGen would, however, have sufficient funds to stabilize the reactor for extended safe storage and would be able to earn additional funds for eventual dismantlement over time.) As a result, at the time such a premature shutdown might occur, AmerGen would be required to provide assurance of any unfunded amount using the available methods in 10 CFR 50.75(e). The staff further notes that, based on financial information

submitted by AmerGen with respect to its parent companies, PECO and BE, Inc., AmerGen appears likely to be able to use, should it choose to do so, a parent company guarantee coupled with a financial test as provided in 10 CFR 50.75(e)(1)(iii)(B). Finally, the staff notes that, under the provisions of 10 CFR 50.82(c), should AmerGen be required to shut down CPS prematurely, the collection period for any shortfall of decommissioning funds would be determined on a case-by-case basis, taking into account AmerGen's specific financial situation.

AmerGen will not be regulated by the Illinois Commerce Commission, or any other rate regulator, with the result that there will be no rate regulatory oversight over the terms and provisions of the decommissioning trust fund. Consequently, the staff concludes that, as a condition to approving the transfer of the Operating License for CPS to AmerGen, certain provisions must be incorporated in the decommissioning trust fund agreement.

The following should be made conditions of the transfer approval as well as license conditions:

- (1) The decommissioning trust agreement must be in a form acceptable to the NRC.
- (2) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, BE, Inc., AmerGen, or affiliates thereof, or their successors or assigns shall be prohibited. Except for investments tied to market indexes or other nonnuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.
- (3) The decommissioning trust agreement must provide that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.
- (4) The decommissioning trust must provide that the agreement cannot be amended in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (5) The appropriate section of the trust agreement shall reflect that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

NRC Staff's Conclusion on the Decommissioning Funding Assurance Mechanism

The NRC staff concludes that, given the considerations discussed above and subject to the trust agreement containing provisions as previously discussed, AmerGen's proposed decommissioning funding assurance mechanism meets the requirements of 10 CFR 50.75(e). The staff further concludes that in order to ensure that the decommissioning trust is maintained, the following should be included as a condition of the transfer approval and as a condition in the Operating License:

AmerGen shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Clinton license to it and the requirements of the Order approving the transfer and the safety evaluation supporting the Order.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

A. 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, AmerGen is controlled by foreign interests such that it may not be issued a license under Section 103.

The NRC has developed 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, which was approved by the Commission on August 31, 1999, as guidance for evaluating the foreign ownership considerations of the proposed purchase of CPS by AmerGen.

B. Discussion

AmerGen's Ownership and Organization

AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States. AmerGen is organized under the laws of the State of Delaware pursuant to an agreement among PECO, BE, Inc., and BE plc. PECO and BE, Inc. each own 50 percent of AmerGen. In its application and supplemental information, AmerGen has provided the information required in 10 CFR 50.33(d). AmerGen's application also referred to (1) information contained in AmerGen's application to transfer the Operating License for TMI-1, and (2) the safety evaluation prepared by the NRC concerning approval of the TMI-1 license transfer. Although TMI-1 was licensed under Section 104 of the AEA, the foreign ownership and control prohibitions are similar to those contained in Section 103 of the AEA, under which CPS was licensed. AmerGen's 50-percent indirect ownership by BE plc, a foreign corporation, raises the issue of whether AmerGen is owned, controlled, or dominated by foreign interests within the meaning of the prohibition contained in Section 103d of the AEA.

Guidance Relevant to the Issue of Foreign Control

The Commission has had limited experience with license transfer applications that involve the issue of foreign ownership, domination, or control. The Commission has stated that, in the context of the other provisions of Section 103d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security. Guidance in the SRP provides that an applicant that is partially owned by a foreign entity -- for example, foreign ownership of 50 percent or greater -- may still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of the applicant who are responsible for

special nuclear material must be U.S. citizens. In addition, partial ownership must be considered in light of all of the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of ownership interests or shares. However, in view of the NRC's consideration of the issue of foreign ownership, control, or domination in the TMI-1 transfer case and the NRC's approval of AmerGen's purchase of TMI-1, and in view of the virtually identical factual situation with respect to AmerGen's ownership of both plants, the staff believes that the TMI-1 decision provides definitive guidance for considering foreign ownership issues with respect to CPS.

Information Provided

AmerGen has provided, in addition to that required by 10 CFR 50.33(d), information specified in Section 2.2 of the SRP on Foreign Ownership, Control, and Domination. In addition, AmerGen has submitted information that essentially describes a "negation action plan" as referred to in Section 4.4 of the SRP. The staff believes that this information is sufficient to conclude that AmerGen has taken, or has committed to take, sufficient mitigating steps to continue to ensure that AmerGen is not owned, controlled, or dominated by an alien, foreign corporation, or foreign government for the purposes of the AEA and the NRC's regulations.

As stated earlier, AmerGen is a limited liability company. Its principal place of business is Wayne, Pennsylvania. Principal officers of AmerGen include both U.S. and British citizens, with the Chief Executive Officer (CEO) and Chief Nuclear Officer (CNO) being U.S. citizens, and the President being a British citizen. The Management Committee, which directs and controls the affairs of AmerGen, consists of at least 50 percent U.S. citizens, including the Chairman. According to the application, the CEO "shall employ," subject to Management Committee approval, officers of the company "necessary or appropriate" to conduct AmerGen's business.

AmerGen further states in its application for the transfer of the CPS Operating License that there has been no material change in the nature and extent of foreign participation in AmerGen and its parent company owners from that described in the TMI-1 safety evaluation.

AmerGen's Proposed Measures To Address Foreign Control Concerns

AmerGen has developed essentially the same negation action plan to address foreign control issues with respect to CPS as it did for TMI-1. Under the Limited Liability Company Agreement (LLC Agreement) by which AmerGen was formed, the "property, business, and affairs" of AmerGen are directed and controlled by a Management Committee pursuant to Article 6.3. Under Article 6.1(a) of the LLC Agreement, PECO, through the PECO Energy Member Group (one of the two member groups of AmerGen), appoints and may remove half of the members of the Management Committee, and BE, Inc., through the BE Member Group, also appoints and may remove half of the members of the Management Committee. (AmerGen indicates that currently there are six members on the Management Committee, half of whom are appointed by PECO and are U.S. citizens, and half of whom are appointed by BE, Inc., and are U.K. citizens.) Pursuant to Article 6.1(d) of the LLC Agreement, the PECO Energy Member Group appoints the Chairman of the Management Committee. The Chairman can only be removed by the PECO Energy Member Group. The Chairman of the Management Committee has a tie-breaking vote on the Management Committee regarding "all [s]afety issues."

The term "Safety Issue" is defined in Section 1.7 of the LLC Agreement to mean any matter that concerns any of the following:

- (i) implementation or compliance with any generic letter, bulletin, order, confirmatory order, or similar requirement issued by the NRC;
- (ii) prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
- (iii) placement of the plant in a safe condition following any nuclear event or incident;
- (iv) compliance with the Atomic Energy Act (AEA), the Energy Reorganization Act, or any NRC rule;
- (v) compliance with a specific operating license and its technical specifications;
- (vi) compliance with a specific Updated Final Safety Analysis Report, or other licensing basis document.¹

The staff concludes that this definition broadly encompasses all issues involving common defense and security, as well as public health and safety, that are under NRC jurisdiction.

AmerGen indicates that Michael J. Egan, a U.S. citizen and Chief Financial Officer of PECO, is the chairman of the Management Committee. Additionally, the CEO and CNO of AmerGen, who is elected by the Management Committee and is responsible for the day-to-day operations of AmerGen, is Gerald R. Rainey, a U.S. citizen. The president of AmerGen is Dr. Robin Jeffrey, a U.K. citizen. AmerGen indicated with regard to the TMI-1 application that the President will not have decisionmaking authority with respect to TMI-1 operations. Rather, the President's duties will be directed toward business decisions, such as future acquisitions by AmerGen. AmerGen indicated that the President's duties have not materially changed since then and that the president will not have decisionmaking authority with respect to CPS. The NRC staff believes that the provisions of the LLC Agreement may not specifically require that AmerGen's CEO and Chairman of the Management Committee must be U.S. citizens in the future. However, AmerGen has indicated that it commits to having a Chairman and half the Management Committee who are U.S. citizens, as reflected in license conditions that AmerGen has agreed to accept for the CPS transfer.

¹ The definition of "Safety Issue" also states, "Any matter on which the Management Committee shall vote in accordance with Section 6.3 that is not primarily one of nuclear safety shall not constitute a Safety Issue, so that, for purposes of illustration only, any plant expenditure of a material nature intended to extend the economic operational life or improve the economic performance of the power station in question shall not be considered a safety question." The staff believes that, for purposes of establishing whether safety decisions are subject to foreign ownership, domination, or control, this and analogous distinctions are acceptable and do not appear to compromise such safety decisions.

AmerGen has also indicated that the current site personnel at CPS, including senior managers, will be essentially unchanged. However, as CPS experiences personnel changes, AmerGen expects that additional experienced personnel may join the site organization during the period leading up to and after the license transfer. In its application for the transfer of the TMI-1 Operating License, AmerGen recommended that substantial weight should be given to the fact that BE plc is a corporate citizen of the United Kingdom (U.K.). The U.K. is, of course, a close ally of the United States to the degree that the U.S. and the U.K. have had an often-cited "special relationship" since at least World War II. The U.K. is also a signatory to the Treaty on Non-Proliferation of Nuclear Weapons, supports the International Atomic Energy Agency (IAEA) safeguards, is a member of the European Atomic Energy Community (EURATOM), and adheres to other international nuclear safety and safeguards guidelines. AmerGen specifically cited a 1995 decision by the U.S. Secretary of Energy, which found that a U.S. - EURATOM agreement of cooperation is not inimical to the common defense and security of the United States. BE plc, as a U.K. corporation, is subject to the laws of the U.K. and the international conventions and treaties to which the U.K. adheres.

The staff believes that such considerations are consistent with making a non-inimicality finding with respect to protecting the common defense and security of the U.S. Though not dispositive of the prohibition of foreign ownership, control, or domination under Section 103d of the AEA, these considerations are also consistent with a favorable determination under that section, because, as the Commission has stated in General Electric Co. and Southwest Atomic Energy Associates, 3 AEC 99 (1966), in context with the other provisions of Section 103d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security.

AmerGen indicates that if it determines that a senior management position is to be filled with a new individual from outside the existing CPS organization contemporaneously with the license transfer, it will inform the NRC in advance of any such change and provide the NRC with a resume for any such individual in advance of the effective date of any such change. As a general matter, new individuals do not require prior approval by the NRC; however, the appointment of any such individual must be consistent with the CPS Operating License and licensing basis and any conditions of approval of the transfer.

Staff Conclusions With Respect to Foreign Ownership Considerations

The staff has considered guidance contained in the Commission's previous decisions with respect to foreign ownership, domination, or control, and contained in the SRP. Additionally, the staff has relied extensively on the analysis and conclusions contained in the TMI-1 safety evaluation. The staff has also evaluated AmerGen's proposed operating structure and information concerning the management officials of the company. As a result, the staff concludes that the transfer of the Operating License for CPS to AmerGen would not violate the prohibitions in the AEA pertaining to foreign ownership, control, or domination, provided that AmerGen is subject to the following conditions as conditions to approval of the transfer and as conforming license conditions to reflect the transfer approval.

Transfer Approval and License Conditions:

- (1) The Limited Liability Company Agreement dated August 18, 1997, and any subsequent amendments as of the date of this safety evaluation, may not be modified in any material

respect concerning decision-making authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

- (2) At least half of the members of AmerGen's Management Committee shall be appointed by a nonforeign member group, all of which appointees shall be U.S. citizens.
- (3) The CEO, CNO (if someone other than the CEO), and Chairman of the Management Committee of AmerGen shall be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of AmerGen with respect to the CPS Operating 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.
- (4) AmerGen shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of PECO Energy stock.

The staff concludes that these conditions are consistent with Commission precedent and are virtually identical to those imposed with respect to the TMI-1 license transfer.

6.0 INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the AEA) and 10 CFR Part 140 require that AmerGen be added to the current IP indemnity agreement. Additionally, in accordance with these requirements, AmerGen must provide primary insurance of \$200 million and must participate in the secondary retrospective insurance pool once it becomes a licensee. These requirements can be met by purchasing insurance policies from the nuclear liability insurance pool, American Nuclear Insurers. AmerGen also will be required to maintain property insurance as specified in 10 CFR 50.54(w). The staff does not have any reason to believe that AmerGen will be unable to meet the statutory and regulatory insurance requirements applicable to all power reactor licensees.

Consistent with NRC practice, the staff will require AmerGen to provide satisfactory documentary evidence that AmerGen has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended Operating License reflecting AmerGen as the licensee. Since the issuance of the amended Operating License is directly tied to the consummation of the sale and transfer of CPS, the Order approving the transfer should contain a condition providing that prior to consummation of the sale and transfer of CPS to AmerGen, AmerGen shall provide satisfactory documentary evidence to the staff that AmerGen has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

7.0 ANTITRUST REVIEW

The AEA does not require or authorize antitrust reviews of post-operating license transfer applications. (See Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station,

Unit 1), CLI-99-19, 49 NRC 441, 468 (1999)). Therefore, since the transfer application post-dates the issuance of the CPS Operating License, no antitrust review is required or authorized.

Even though no antitrust review under Section 105 of the AEA is required or authorized, and, therefore, the staff is not conducting an antitrust review, the appropriate disposition of the existing antitrust license conditions in connection with the approval of the conforming amendment of the Operating License has been raised by the applicants. Specifically, the application requests that the existing antitrust license conditions applicable to the current licensee, IP, be deleted from the Operating License when the conforming amendment is issued, which otherwise would administratively substitute AmerGen for IP throughout the Operating License.

In the Commission's recent decision regarding the license transfer for the Wolf Creek Facility cited herein, the Commission addressed the issue of how to handle existing antitrust license conditions in transfer situations. The Commission listed several possibilities: (1) keep the conditions in the transferred license, (2) eliminate the conditions, or (3) modify the conditions. The Commission opined that in the abstract, no one solution can be "generically preordain[ed]" for all cases. It stated that the license conditions on their face, the nature of the license transfer, and "perhaps" the competitive situation as well need to be considered to determine the appropriate disposition of the existing conditions.

In the Wolf Creek situation, the Commission approved the proposed amendment of the Wolf Creek antitrust license conditions to simply substitute the transferee in place of the existing licensees, without substantive changes to the conditions. The two existing licensees now subject to the conditions are merging to essentially become the new proposed licensee (a co-licensee with a 6-percent ownership interest in the facility was not involved in the merger). In addition, the merging parties requested that the Wolf Creek antitrust license conditions be amended at the time the transfer is effected to substitute the new entity such that it would become subject to the antitrust conditions. The new transferee represented that it would be a traditional electric utility with transmission and distribution assets; therefore, keeping the existing conditions in place would not be problematical insofar as the transferee would be capable of complying with provisions requiring certain interconnections and related services.

In general, antitrust license conditions are imposed by the NRC under Section 105 of the AEA if the NRC finds, based on an antitrust review prescribed by section 105, that the granting of a license would create or maintain a situation inconsistent with the antitrust laws. In making this determination, the Commission takes into account, among other things, any prior anticompetitive conduct of the applicant and whether the additional generating capacity under the Operating License in light of such conduct would create or maintain a situation inconsistent with the antitrust laws. Antitrust license conditions are thus specific to a particular entity and its conduct in the marketplace and are distinguishable from other types of license conditions that govern the safe operation of the plant and that would be automatically transferred intact in connection with a license transfer.

The application here raises several points in support of the request to delete the antitrust license conditions. The most significant to the staff are the following: (1) AmerGen is not affiliated with IP and is not a corporate "successor" to IP; (2) AmerGen is a power generator only, without a public utility transmission network; and (3) the specific antitrust license condition

that provides for ownership participation or purchase of unit participation power from CPS has expired on its own terms.

In consideration of the Commission's decision in the case of Wolf Creek, the general basis on which antitrust license conditions are imposed, and the arguments presented in the application, the staff concludes that there is no basis for these antitrust license conditions here if the Operating License is transferred to AmerGen. AmerGen is not a successor to IP in the sense that the proposed transferee in the Wolf Creek license transfer situation is essentially the successor to the licensees now subject to those antitrust license conditions and whose prior conduct entered into the determination to originally impose such conditions. Moreover, the antitrust license conditions contain several provisions that can have no practical application to AmerGen, which has no transmission or distribution network.

In arriving at its conclusion, the staff is making no determination of the current or prospective competitive situation since, as stated earlier, the staff has not conducted an antitrust review. In summary, the request to not transfer the antitrust license conditions to AmerGen is acceptable.

8.0 TECHNICAL QUALIFICATIONS

Basis and Guidance for NRC Evaluation

The staff used the following regulations and guidance in making its evaluation:

- 1) 10 CFR 50.40(b), "Common Standards,"
- 2) Standard Review Plan (SRP) NUREG-0800, Section 13.1.1, "Management and Technical Support Organization,"
- 3) SRP, Sections 13.1.2-13.1.3, "Operating Organizations," and
- 4) American National Standards Institute (ANSI) - N18.1-1971, "Selection and Training of Nuclear Power Plant Personnel," as endorsed by Regulatory Guide 1.8, Revision 2, April 1987, "Qualification and Training of Personnel for Nuclear Power Plants."

The overall purpose of this review is to ensure that the applicant's corporate organization and technical staff are sufficiently qualified to provide support for safe plant operation.

Evaluation: Management and Technical Support Organization

Applying the basis and guidance for NRC evaluation listed at the beginning of this section, the staff reviewed the applicant's submittal to determine the acceptability of the AmerGen corporate level management and technical support organization. The review included an examination of each of the following criteria. (For clarity, the evaluation follows the appropriate criteria listed in bold.)

- 1. The organizational groups responsible for implementation of technical support for operation of CPS are identified and described.**

In the July 23, 1999, application, IP and AmerGen stated that the existing IP technical support organizations, as described in the Updated Safety Analysis Report, for CPS are currently

located at the CPS site and these organizations will continue to perform technical support on behalf of AmerGen.

The staff concludes that the proposed technical support organization for CPS is acceptable based on the identification and description of the organizational groups responsible for technical support for operation of CPS.

2. The methods for implementing the technical support and operation of CPS are described.

In the July 23, 1999, application, IP and AmerGen stated that IP's existing nuclear organization at the CPS site will be transferred to AmerGen, IP's nuclear employees at the CPS site will become AmerGen employees, and the plant staff, including senior managers, will be essentially unchanged. IP and AmerGen further state that the functions, responsibilities, and reporting relationships of these organizations, especially as they relate to activities important to the safe operation of CPS, will continue to be clear and unambiguous, and the performance of these organizations will be essentially unaffected by the transfer.

Based on the retention and use of existing IP nuclear employees in support activities related to safe operation of CPS, the staff concludes that the methods for implementing technical support and operations of CPS are acceptable.

3. The organizational structure provides for the integrated management of activities that support the operation and maintenance of CPS.

In the July 23, 1999, application, IP and AmerGen stated that the existing CPS nuclear organization and employees will be transferred to AmerGen. In addition, it is expected that qualified personnel will leave and join the site organization. Prior to the transfer, decisions regarding such changes will be made by IP; following the transfer, such decisions will be made by AmerGen. New personnel will meet all of the existing qualification requirements in accordance with the CPS license and Technical Specifications. If a senior management position is to be filled with a new individual from outside the existing CPS organization, AmerGen will notify the NRC in advance and provide the NRC with a resume for the individual prior to the effective date of the change. With the purchase of CPS by AmerGen, the nuclear organizations will continue to report to the CPS Site Vice President - Nuclear.

Based on the retention of the existing CPS nuclear organization and employees, the staff concludes that the organizational structure provides for the integrated management of operations and maintenance activities.

4. Clear management control and effective lines of authority and communications exist between the organizational units involved in the management, operations, and technical support for operation of CPS.

In the July 23, 1999, application, the proposed AmerGen organizational chart was provided that depicts the various control and communication relationships that exist at the AmerGen corporate level between AmerGen and the CPS site. The Site Vice President, CPS, will report to the AmerGen CNO and will have direct onsite responsibility for safe, reliable operations and

maintenance of CPS. The CEO of AmerGen is also the CNO and is the offsite corporate official responsible for the safe, reliable operation and maintenance of CPS.

Based on the information provided in the application, the staff concludes that clear management control and effective lines of authority and communication exist between AmerGen and CPS.

5. Substantive breadth and level of experience and availability of personnel exist to implement the responsibility for technical support for operation of CPS.

As described in the July 23, 1999, application, personnel presently assigned responsibilities in the AmerGen corporate structure exhibit sufficient experience to implement their individual responsibilities for technical support for the operation of CPS. AmerGen employees assigned responsibilities at CPS have experience in the management, operations, and maintenance of commercial nuclear power facilities. As stated in the application, in the evaluation related to the license transfer of TMI-1, the NRC determined that AmerGen corporate-level management was capable of managing the operation of a nuclear power facility. PECO entered into a management services agreement with IP with respect to CPS in 1998. Since that time, PECO has had personnel assigned to CPS. These individuals actively assisted in the restart of CPS and are currently providing technical support for the operation of CPS. Additionally, AmerGen and PECO personnel meet the required qualifications in Regulatory Guide 1.8 and ANSI-N18.1-1971, "Selection and Training of Nuclear Power Plant Personnel."

Based on the information provided in the application, the staff concludes that there is substantive breadth, level of experience, and availability of personnel implementing technical support for the operation of CPS.

6. The corporate-level management and technical support structure should be free of ambiguous assignments of primary responsibility. A corporate officer should clearly be responsible for nuclear activities without having ancillary responsibilities that might detract from attention to nuclear safety matters.

In the July 23, 1999, application, AmerGen and IP stated that the Site Vice President - CPS will be the senior nuclear executive with direct onsite responsibility for implementing all activities associated with the safe, reliable, and economic operations and maintenance of CPS. This individual will be responsible for nuclear activities, will not have nonnuclear ancillary responsibilities, and will be free of ambiguous assignments.

Based on the Site Vice President - CPS being the senior nuclear executive responsible for the operation and maintenance of CPS, the staff concludes that the corporate-level management and technical support structure is free of ambiguous assignments. The Site Vice President - CPS is clearly responsible for onsite nuclear activities and will not have ancillary responsibilities that might detract from attention to nuclear safety matters.

Operating Organization

In the July 23, 1999, application, IP and AmerGen state that the existing nuclear organization will be transferred to AmerGen, IP's nuclear employees will become AmerGen employees, and

the staff will be essentially unchanged. Further, additional experienced personnel joining the CPS organization will meet all existing qualification requirements in accordance with the CPS Operating License and Technical Specifications. The staff concludes that the proposed CPS operating organization is acceptable and meets the criteria described in SRP Sections 13.1.2 and 13.1.3, "Operating Organization."

Staff Conclusions With Respect to Technical Qualifications

AmerGen has described its proposed organization and personnel qualifications for the management of, and means for providing technical support to, the plant staff for operation of CPS after the license transfer from IP to AmerGen. The management and technical support organizations have been reviewed and the staff concludes that AmerGen has acceptable organizations and adequate resources to provide technical support for the operation of CPS under both normal and off-normal conditions.

The application adequately addresses the relevant requirements of 10 CFR 50.40(b), and the findings of the staff contribute to the judgment that AmerGen is technically qualified to operate CPS and that AmerGen has the necessary managerial and technical resources to provide assistance to CPS. The staff, therefore, concludes that AmerGen meets the relevant criteria and, therefore, has an acceptable management and technical support organization to provide adequate technical support for the operation of the facility.

9.0 CONFORMING AMENDMENT

Introduction

As stated previously, IP and AmerGen have requested approval of a proposed conforming amendment to CPS Facility Operating License No. NPF-62. Except for the removal of the antitrust license conditions, which the staff previously concluded should not remain part of the Operating License once it is transferred from IP, the requested changes simply replace references to IP in the Operating License with references to AmerGen to reflect the proposed license transfer and change of ownership. No physical changes to the facility or changes to the Technical Specifications are requested.

Discussion

The requested changes made to the Operating License do no more than accurately reflect the approved transfer action, which is subject to certain conditions set forth in the Order approving the transfer, and that were identified and discussed earlier in this safety evaluation. The amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

State Consultation

In accordance with the Commission's regulations, the Illinois State official was notified of the proposed issuance of the amendment. The State official had no comments.

Conclusion With Respect to the Conforming Amendment

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.

10.0 COMMENTS RECEIVED

The Environmental Law & Policy Center of the Midwest (ELPC) filed timely comments dated September 20, 1999, and untimely comments dated November 2, 1999. ELPC argues with respect to the latter that they should be given consideration in light of recent developments that did not become known until after the deadline for comments. Specifically, ELPC cites to new information revealing a proposed merger between PECO and Unicom, which indirectly controls the licenses for a number of reactors through its subsidiary, Commonwealth Edison, and recent announcements disclosing AmerGen's plans to acquire the Vermont Yankee and Oyster Creek plants. Because both sets of ELPC's comments address essentially the same issues, the staff responds to both below, notwithstanding the untimeliness of the November 2, 1999, submittal.

The gist of ELPC's comments is that AmerGen has not adequately demonstrated its financial qualifications and reasonable assurance of decommissioning CPS because the impact on AmerGen's financial arrangements and capabilities resulting from the proposed purchase of other plants or the proposed merger between PECO and Unicom involving several other plants has not been adequately taken into consideration. ELPC argues that the Commission should consider in its review of the CPS transfer application these "changed circumstances."

Earlier in this safety evaluation, the staff concluded that in connection with the transfer of CPS to AmerGen, AmerGen is financially qualified under NRC regulations and has met applicable decommissioning funding requirements. In reaching this conclusion, the staff considered AmerGen's position under the facts and circumstances as they exist today. While AmerGen has announced plans to acquire more facilities, it has not done so; whether such plans will come to fruition is a matter of speculation at this point, as is the consummation of any merger between PECO and Unicom. In other words, actual circumstances have not changed from what has been presented in the application. If and when the planned acquisitions and merger are presented to the staff for review and approval with respect to any license transfers, the staff will certainly address, at that time, all of the actual "changed circumstances" which may have occurred or will occur as a result of the licensing action. Contrary to ELPC's suggestion that the NRC is "ignoring the forest" by not first "comprehensively explor[ing] all of the financial and safety implications" of industry restructuring, of which AmerGen is a part, before acting on the CPS application, the NRC has appropriately considered all relevant facts that may bear on this action, including AmerGen's approved acquisition of the TMI-1 Operating License. In summary, ELPC has not presented any information that would cause the staff to alter its findings.

11.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of an Operating 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.

12.0 CONCLUSION

In view of the foregoing discussion, the staff concludes that AmerGen is financially qualified to own, operate, and decommission CPS. The staff also concludes that AmerGen is technically qualified to operate CPS. Additionally, the staff concludes that no antitrust review is required or authorized in connection with the proposed transfer, and that the antitrust license conditions applicable to IP should not be transferred to AmerGen. Furthermore, the staff concludes that, with the imposition of the conditions described elsewhere in this safety evaluation and contained within the Order approving the transfer, the foreign ownership prohibition contained in Section 103d of the AEA does not bar AmerGen from acquiring the CPS Operating License.

Thus, the staff has determined that AmerGen is qualified to be the holder of the CPS Operating License, and that the transfer of the Operating License to AmerGen is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, with the conditions referenced above.

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