



Backgrounder

Office of Public Affairs
Telephone: 301/415-8200 E-mail: opa@nrc.gov

Reactor License Transfers

Background

The deregulation of the electric utility industry has led to increased economic competition in energy markets and increased the number of requests filed with NRC for transferring power reactor operating licenses. Electric utilities traditionally have been granted monopoly status in the areas they serve because it was felt it would be economically inefficient to have two or more electric utilities, each with its own generation, transmission, and distribution systems, competing for the same retail customers. While this continues to be generally true of the transmission and distribution parts of electricity supply, almost half of the states have allowed or are considering customers to choose their electricity generator. These initiatives have been designed to increase economic efficiency and lower electricity prices to consumers.

The NRC has received requests for different types of transfers because of the different corporate strategies of its licensees or different state approaches to deregulation. Some licensees are choosing or are being required by their states to get out of the electricity generating business entirely. Other licensees may decide that they are too small to compete effectively in a market environment and seek merger partners. Still other licensees form parent holding companies that will allow them to diversify into other areas or markets. Finally, some companies form nuclear operating company subsidiaries to increase technical focus or take advantage of economies of scale that can result when an operating company runs several nuclear plants.

Table 1 shows a sample of the plants whose license transfer requests were processed and the category under which they fall.

Table 1

<u>PLANT NAME</u>	<u>OLD LICENSEE</u>	<u>NEW LICENSEE</u>	<u>TYPE OF CONSOLIDATION</u>
TMI-1	GPU Inc.	AmerGen	Acquisition
Pilgrim	Boston Edison Co.	Entergy	Acquisition
Clinton	Illinois Power Co.	AmerGen	Acquisition
Oyster Creek	GPU Inc.	AmerGen	Acquisition
Fitzpatrick	NY Power Authority	Entergy	Acquisition
Indian Point 3	NY Power Authority	Entergy	Acquisition
Millstone 1	Northeast Utilities	Dominion Energy Holdings Inc.	Acquisition
Millstone 2	Northeast Utilities	Dominion Energy Holdings Inc.	Acquisition
Millstone 3	Northeast Utilities	Dominion Energy Holdings Inc.	Acquisition
Indian Point 2	ConEd of New York	Entergy	Acquisition
Vermont Yankee	Vermont Yankee	Entergy	Acquisition
Seabrook Unit 1	N. Atlantic Energy Service Co.	FPL Group.	Acquisition
Beaver Valley 1 & 2	Dusquesne Light Co.	Inter-Utility	Asset Exchange
Davis-Besse	Toledo Edison Co.	Inter-Utility	Asset Exchange
Perry	Cleveland Elec. Illum. Co.	Inter-Utility	Asset Exchange
Duane Arnold	IES Utilities	Inter-Utility	Management Co.
Kewaunee	Wisconsin Public Serv. Corp.	Inter-Utility	Management Co.
Point Beach 1 & 2	Wisconsin Public Serv. Corp.	Inter-Utility	Management Co.
Monticello	Northern States Power Co.	Inter-Utility	Management Co.
Prairie Island 1 & 2	Northern States Power Co.	Inter-Utility	Management Co.

Over the past 7 years, the NRC has reviewed more than 80 license transfer applications. For the first time, the NRC reviewed and approved applications for the sale of entire nuclear units from one owner to another, unrelated owner. The NRC approved the sale of Three Mile Island, Unit 1 on April 12, 1999, Pilgrim Station on April 29, 1999, Fitzpatrick and Indian Point 3 on November 9, 2000, and Seabrook Unit 1 on November 1, 2002.

However, restructuring due to electric utility deregulation has been delayed in five states, suspended in one state, and is inactive in 25 states. As a result, over the past 30 months, there has been a drop in the number of license transfer requests for merger, holding companies, and operating companies involving current NRC power reactor licenses. In 2004, NRC processed 6 license transfers.

License Transfer Regulations

- 10 CFR Part 2, Subpart M (e.g., 10 CFR 2.1301) - Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Application
- 10 CFR 50.33 - Contents of applications, general information
- 10 CFR 50.38 - Ineligibility of certain applicants
- 10 CFR 50.40 - Common Standards for issuing a license
- 10 CFR 50.75 - Reporting and recordkeeping for decommissioning planning
- 10 CFR 50.80 - General guidance for transfer to licenses
- 10 CFR 50.140 - Financial protection requirements and indemnity agreements

The provisions of Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and the NRC's regulations at Title 10 of the Code of Federal Regulations (CFR), Part 50.80, stipulate that no transfer can occur unless the NRC gives its consent in writing. These provisions apply to both direct and indirect transfers. Direct transfers are generally those that involve transfer of ownership or operating authority of the plant itself from one entity to another – for example, the sale of a plant. Indirect transfers generally involve transfers of ownership in the licensee rather than the facility – for example, the formation of a new parent holding company above a licensee.

Technical Qualifications

The NRC reviews a transfer applicant's technical qualifications based on its regulations (10 CFR 50.40(b), on Common Standards, NRC Standard Review Plan for "Management and Technical Support Organization," and American National Standards Institute standard on Selection and Training of Nuclear Power Plant Personnel. The NRC focuses its reviews of technical qualifications in license transfer applications on determining whether the proposed transfer recipient has the technical expertise to continue to run the plant safely. For indirect transfers, where the licensee itself remains the same, technical qualifications are generally not an issue in the NRC's review. For direct transfers, particularly with respect to sales where the operator changes, the scope of the review will depend on the degree to which the existing plant personnel and organization will change.

Financial Qualifications

The NRC evaluates a proposed transfer recipient's financial qualifications to operate and decommission the nuclear plant(s) whose license is to be transferred. The NRC reviews the transfer recipient's financial qualifications for operations by using the provisions contained in 10 CFR Part 50.33(f). If the transfer recipient is an "electric utility" as defined in the NRC's regulations, no further review of financial qualifications for operations is required. If the proposed transfer recipient is not an "electric utility," the NRC will evaluate sources of revenues and projected 5-year operating costs with respect to the plant to determine whether the transfer recipient has reasonable assurance of obtaining the funds necessary to operate the plant safely.

Decommissioning funding assurance reviews are governed by 10 CFR Part 50.75. The NRC determines whether the proposed transfer recipient has demonstrated reasonable assurance of

decommissioning funds and whether the transfer recipient is rate-regulated or has access to a non-bypassable “wires” charge. These are charges that electricity customers must pay for the transmission and distribution of electric power, no matter what the source of generation, and that many States have imposed as a part of their deregulation initiatives. If so, a licensee may accumulate decommissioning funds in external trust accounts over the remaining term of the license. If not, assurance of the entire amount of NRC-defined decommissioning costs is required, using one of the other assurance mechanisms provided in its regulations. These mechanisms include prepayment of the estimated decommissioning cost, guarantees of the estimated amount using surety bonds, letters of credit, parent or self-guarantees coupled with passage of financial tests specified in the NRC’s regulations, or other methods providing the same degree of assurance as the other allowable mechanisms.

Foreign Ownership

Another area that the NRC must assess in license transfer requests is whether a proposed transfer recipient is owned, controller, or dominated by a foreign individual or entity. Such foreign ownership, control, or domination is prohibited by Sections 103 and 104 of the Atomic Energy Act (AEA) and by 10 CFR Part 50.38. The NRC review process is oriented toward determining that foreign individuals or entities do not control safety-related activities under the license, with an emphasis on protecting the common defense and security of the U.S. For example, in the license transfer of TMI-1, AmerGen Energy Company, the buyer, is 50% indirectly owned by British Energy, plc, a foreign corporation. The NRC accepted AmerGen’s “negotiation action plan,” which requires AmerGen’s other 50% owner, PECO, Inc. (now a part of Exelon Generation Company), to have control over safety-related decisions and reserves such authority to U.S. citizens.

Antitrust

Until 1999, NRC practice had been to review license transfer applications for antitrust considerations pursuant to Section 105 of the AEA. However, on June 18, 1999, in Memorandum and Order CLI-99-19, the Commission determined that the AEA does not require or authorize antitrust reviews of post-operating license transfer applications.

Insurance

Finally, the NRC reviews license transfer applications to ensure that the proposed transfer recipient has the required insurance and indemnity for off-site liability claims of personal injury and property damage required under Section 170 of the AEA and 10 CFR Part 140. The NRC also ensures that transfer recipients have on-site property damage insurance to help cover reactor cleanup costs after an accident, to the extent required by 10 CFR 50.54(w).

License Transfer Process Improvements

Since 1995, the NRC has engaged in a comprehensive effort to address the implications of electric utility rate deregulation for the adequate protection of public health and safety. The NRC issued a final policy statement on the restructuring and economic deregulation of the electric utility

industry on August 19, 1997. In part, this policy statement addressed topics that are relevant to the license transfer process.

Similarly, in September 1998, the NRC published a final rule on financial assurance requirements for decommissioning nuclear power reactors. Among other things, the rule (1) broadens allowable funding assurance mechanisms to include some decommissioning expenses that many states are imposing as part of their deregulation initiatives; (2) requires licensees to report biennially on the status of their decommissioning funds; and (3) allows a 2% annual rate of return credit for decommissioning fund earnings if a public utility commission has not allowed some other rate.

NRC's review of a license transfer application takes between 6 and 9 months, depending on the complexity. In December 1998, the NRC developed a rule to streamline the license transfer hearing process. It established a more informal, speedier hearing process and eliminated the need for case-specific Environmental Assessments and No Significant Hazards determinations.

In addition, the NRC has developed the following guidance:

Antitrust Standard Review Plan (SRP), NUREG-1574, December 1997;

Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance, NUREG-1577, Rev. 1, March 1999,

Management and Technical Support SRP, NUREG-0800, November 1999,

Integrated SRP on All Aspects of License Transfers, NUREG/BR-0276, April 2000,

Changes Concerning Foreign Ownership, Control, or Domination of Nuclear Reactor Licensees, Regulatory Information Summary (RIS)-00-001, February 1, 2000, and

Criteria for Triggering a Review Under 10 CFR 50.80 for Non-Owner Operator Service Companies, Regulatory Information Summary (RIS)-01-006, February 15, 2001.

June 2005