

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATED TO AMENDMENT NO. [XXX] TO FACILITY OPERATING LICENSE DPR-21
AND AMENDMENT NO. [XXX] TO FACILITY OPERATING LICENSE DPR-65
AND AMENDMENT NO. [XXX] TO FACILITY OPERATING LICENSE NPF-49
INDIRECT LICENSE TRANSFER DUE TO
CORPORATE RESTRUCTURING OF PARENT COMPANIES OF
DOMINION NUCLEAR CONNECTICUT, INC.
MILLSTONE POWER STATION, UNITS 1, 2 AND 3
DOCKET NOS. 50-245, 50-336 AND 50-423

1.0 INTRODUCTION

By application dated October 8, 2003, as supplemented by letter dated November 7, 2003, Dominion Nuclear Connecticut, Inc. (DNC) requested that the United States Nuclear Regulatory Commission (NRC) consent to the indirect transfer of Facility Operating Licenses Nos. DPR-21, DPR-65 and NPF-49 for the Millstone Power Station, Units 1, 2 and 3, (Millstone Units), respectively, to the extent held by DNC. DNC is a 100% owner of Millstone Power Station, Unit 2, a 93.47% owner of Millstone Power Station, Unit 3, and an 81% owner of Millstone Power Station, Unit 1, which is currently in SAFSTOR. The requested approval relates to proposed changes to certain intermediate subsidiaries of Dominion Resources, Inc. (DRI) affecting the chain of ownership between DRI and DNC, through a corporate restructuring, which is detailed below. The supplement dated November 7, 2003, provided additional information that clarified the application, and did not expand the scope of the application as originally noticed.

An earlier application dated August 31, 2000, provided the initial information to assess the direct transfer application, under 10 CFR 50.80, of the Millstone Units from Northeast Nuclear Energy Company, et al., to DNC. An Order Approving the Transfer of Licences from Northeast Nuclear Energy Company, et al., to DNC and Approving Conforming Amendments, dated March 9, 2001, approved the corporate structure indicated at that time.

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The proposed changes reflect an internal realignment and consolidation of energy market functions within the DRI companies. DNC will remain an indirect, wholly owned subsidiary of DRI, and DNC will remain an indirect, wholly owned subsidiary, of DRI's directly owned subsidiary, Dominion Retail, Inc. However, altering part of the chain of ownership of DNC is proposed and is the subject of this safety evaluation.

2.0 BACKGROUND

Currently, DRI directly owns Virginia Electric & Power Company, (VEPCO), Dominion Energy, Inc., (DEI), and Consolidated Natural Gas Company, (CNG). DEI owns 100% of Dominion Nuclear, Inc., (DNI), and CNG owns 100% of Dominion Retail, Inc., (Retail). DNI is the parent company of Dominion Nuclear Holdings, Inc., (DNH), Dominion Nuclear Marketing I, Inc. (DNMI), Dominion Nuclear Marketing II, Inc., (DNMII), and Dominion Nuclear Marketing III, LLC, (DNMIII). DNH and Retail also have part ownership of DNMIII. DNMI, DNMII, and DNMIII are the direct parent companies of DNC, the holder of the licenses of the Millstone Units. This corporate structure can be graphically seen as Exhibit B, "Current Corporate Ownership of Dominion Nuclear Connecticut," of the October 8, 2003, Application.

The proposed corporate restructuring will have DRI continue to own VEPCO, DEI and CNG. Dominion Energy Marketing, Inc. (DEM) will be formed by merging DNMI and DNMII, and will be the direct subsidiary of DEI and a direct parent company of DNC. DNI will no longer be a subsidiary of DEI and DNH becomes a direct subsidiary of DEI. CNG continues to be direct parent company of Retail, and Retail will continue to be a direct parent company of DNMIII. Thus only DEM and DNMIII will be the direct parent company of DNC. This proposed corporate restructuring can be graphically seen as Exhibit C, "Corporate Ownership of Dominion Nuclear Connecticut, After Proposed Realignment," of the October 8, 2003, Application.

3.0 REGULATORY FRAMEWORK

The licensee requests that to the extent that this internal corporate realignment is considered an indirect transfer of the licenses held by DNC, the applicant requests NRC's consent pursuant to the general provisions of 10 CFR 50.80, "Transfer of licenses." In conducting this safety evaluation under 10 CFR 50.80, parts of regulations 10 CFR 50.33, "Contents of applications; general information," and parts of 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," were also invoked.

The NRC staff finds that the licensee in its application identified the applicable regulatory requirements. The NRC staff concurs with DNC that the proposed corporate restructuring represents sufficient change, constituting an indirect transfer of the Millstone Units licenses to the extent held by DNC.

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4.0 EVALUATIONS

4.1 FINANCIAL QUALIFICATIONS

Section 50.2 of 10 CFR states an electric utility is “any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.”

The NRC staff finds that DNC does not qualify as an “electric utility” as defined in 10 CFR 50.2 because most of its electricity prices will not be set by a separate regulatory authority or by the entity itself. Thus the staff has determined that DNC must meet the financial qualifications requirements for a non-utility pursuant to 10 CFR 50.33(f). DNC, as both a recently formed entity and a non-electric utility, contingent to an indirect transfer due to a proposed corporate restructuring, described above, is subject to a more detailed financial qualifications review by the NRC than an established electric utility. Specifically, DNC must meet the requirements of 10 CFR 50.33(f) by providing information that shows the following:

- 1.) As a non-(electric) utility applicant for an indirect transfer for its operating licenses, it possesses or has reasonable assurance of obtaining the necessary funds to cover estimated operating costs for the first five years of facility operation and indicate the source(s) of funds to cover these costs.
- 2.) As an entity organized primarily for the purpose of operating a nuclear power plant, it must show (a) the legal and financial relationship it has or proposes to have with its stockholders or owners; (b) its financial ability to meet any contractual obligations to any entity which they have incurred or propose to incur; and (c) any other information considered necessary by the NRC to enable it to determine the applicant's financial qualification.

Also, 10 CFR 50.33(k)(1) requires that DNC provide information described in 10 CFR 50.75 indicating reasonable assurance that funds will be available to decommission the facilities. DNC's proposals for decommissioning funding assurances are discussed in Section 4.0 of this Evaluation.

Section 1.0 of this Evaluation describes the current and proposed corporate structures under which DNC will operate. The proposed corporate structure itself defines the legal and financial relationship it proposes to have with its stockholders and owners.

The NRC staff notes that under the August 31, 2000, application (to the extent of the direct transfer of Millstone Units licenses from Northeast Nuclear Energy Company, et. al., to DNC), Retail entered into an agreement with DNC to make funding of up to \$150 million available to DNC to provide added assurance that DNC will have sufficient funds available to meet its operating expenses for the Millstone Units. Under the terms of the agreement, DNC has the right to obtain such funds from Retail as DNC determines are necessary to protect public health and safety, meet NRC requirements, meet ongoing operational expenses, or to maintain the Millstone Units safely. This agreement will not terminate until all the Millstone Units

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permanently terminate operations, and may not be modified or amended without thirty days prior written notice to the NRC.

In accordance with 10 CFR 50.33(f) and the Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (NUREG-1577, Rev. 1), projected income statements for the full five year period from 2004 to 2008 were provided in the November 7, 2003 supplement to the application.

DNC's
(SUMMARY OF) PROJECTED INCOME STATEMENT
(In \$millions)

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
Total Revenue:	\$████	\$████	\$████	\$████	\$████
Total Operating Expenses:	\$████	\$████	\$████	\$████	\$████
Income Before Taxes & Interest:	\$████	\$████	\$████	\$████	\$████
Total Taxes & Interest:	\$████	\$████	\$████	\$████	\$████
Net Income:	\$████	\$████	\$████	\$████	\$████

Due to the nature of predicting future market prices, the staff notes that if prices per megawatt hour were to drop by an average of 10.0%, the average net effect on the five years of Net Income, is a drop from the projected \$████ million to a possible \$████ million. Similarly, if an average historical capacity factor of 87% is assumed instead of the projected average capacity factor of █%, then the average net effect on the five years of Net Income is a drop to a possible \$████ million.

The staff finds that DNC's Projected Income Statement shows that the anticipated revenues from sales of energy and capacity from the Millstone Units provide reasonable assurance of an adequate source of funds to meet DNC's anticipated expenses during the five year period covered by the projections. The NRC staff finds that no further financial qualifications analysis or review is necessary.

Thus the NRC staff has determined that DNC has met the financial qualifications requirements for a non-utility pursuant to 10 CFR 50.33(f).

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4.2 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of public health and safety. The regulation in 10 CFR 50.33(k) requires that an applicant for an operating license for a utilization facility contain information on how reasonable assurance will be provided that funds will be available to decommission the facility to NRC standards.

DNC has filed its decommissioning funding reports with the NRC under 10 CFR 50.75(f)(1) and is providing financial assurance for decommissioning the Millstone Units in accordance with the NRC's regulation through a pre-payments to each unit's external trust fund. The application stated that no changes in DNC's decommissioning funding assurance is being proposed in connection with the proposed corporate restructuring, from what was previously declared in the August 31, 2000, direct transfer application of the Millstone Units from Northeast Nuclear Energy Company, et al., to DNC. After the proposed corporate restructuring, DNC will remain responsible for the decommissioning liabilities associated with the Millstone Units in accordance with 10 CFR 50.75.

In conformance with 10 CFR 50.75(f)(1), the DNC submitted its biennial decommissioning funding status report by the March 31, 2003, required date. The NRC staff has confirmed that, as of December 31, 2002, the decommissioning trust funds associated with DNC's ownership of the Millstone Units are funded in accordance with NRC's regulations. Based on the discussion above, the staff concludes that the applicant has complied with the requirements of 10 CFR 50.75(b) with respect to the minimum amount of decommissioning funding that must be provided.

In the application, DNC states " the [proposed corporate] restructuring will not affect or alter the decommissioning funding, including the parent company guaranties currently issued by Dominion Retail, Inc. for decommissioning funding of Millstone Units 1 and 2."

The NRC staff concludes that, given the considerations discussed herein, DNC's funding mechanism for the Millstone Units, notwithstanding the proposed corporate restructuring, will continue to meet the requirements of 10 CFR 50.75(e) and not be affected.

4.3 ANTITRUST REVIEW

The Atomic Energy Act of 1954, as amended (AEA), does not require or authorize antitrust reviews of post-operating licence transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). Therefore, since the application postdates the issuance of the Millstone Units operating licenses, no antitrust review is required or authorized.

4.4 FOREIGN OWNERSHIP, CONTROL OR DOMINATION

Section 103d of the Atomic Energy Act, as amended, (AEA) prohibits the NRC from issuing a license for a nuclear power plant 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 NRC's regulations at 10 CFR 50.38 contain virtually identical language to implement this prohibition.

The proposed corporate restructuring will not alter DNC's organization, staff, officers, or directors, or any of DNC's programs, procedures, or conduct of operations. DNC's directors and principal officers are and will all remain United States citizens. DNC states in their application, "DNC is not now and will not after restructuring be owned, controlled, or dominated by an alien, foreign corporation, or foreign government."

The NRC staff does not know or have reason to believe otherwise.

4.5 NUCLEAR INSURANCE AND INDEMNITY

The licenses for the Millstone Units will continue to possess the proper insurance and indemnity required under Section 170 of the Atomic Energy Act, as amended, (AEA), 10 CFR 140, and 10 CFR 50.54(w). As these conditions were met under the August 31, 2000, application and its subsequent Safety Evaluation, the NRC staff does not know or have reason to believe otherwise.

5.0 CONCLUSION

In view of the foregoing, the NRC staff concludes that the proposed corporate restructuring of DNC's intermediate parent companies, will not affect the qualifications of DNC as holder of the Millstone Units (1, 2 and 3) licenses, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with the applicable provisions of laws, regulations, and orders issued by the NRC pursuant thereto.

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Date: November 25, 2003

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