



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BLVD.
KING OF PRUSSIA, PA 19406-2713

August 24, 2022

Douglas J. Rosenberger, Mitchell Plant Manager
Wheeling Power Company
8999 Energy Road
Moundsville, WV 26041

SUBJECT: WHEELING POWER COMPANY, ACCEPTANCE OF NOTIFICATION OF
CHANGE OF OWNERSHIP, MAIL CONTROL NO. 630505

Dear Mr. Rosenberger:

By letter received March 9, 2022, (Agencywide Documents Access and Management System (ADAMS) Accession Number ML22087A453) and additional information submitted June 2, 2022 (ML22154A175) and August 20, 2022 (ML22235A679), Kentucky Power dba American Electric Power (Kentucky Power) submitted to the U.S. Nuclear Regulatory Commission (NRC) a request for written consent to a direct transfer of control of NRC Materials License number 47-31210-01. In accordance with Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR 30.34, the NRC consents to the transfer.

Kentucky Power is authorized by the NRC for the possession and use of byproduct material under Part 30. By letter received March 9, 2022, Kentucky Power requested written consent to the direct transfer of control of its license from the NRC. Because the license was issued under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," the NRC must find that the transfer is in accordance with the provisions of the AEA and, if so, must give its consent in writing prior to the transfer, in accordance with Section 184 of the AEA and 10 CFR 30.34(b). Additionally, the NRC staff reviewed the direct transfer of control request using the guidance in NUREG-1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses – Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," dated June 2016.

10 CFR 30.34(b) states:

- (1) No license issued or granted pursuant to the regulations in [parts 30] through 36, and 39 nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.
- (2) An application for transfer of license must include:
 - (i) The identity, technical and financial qualifications of the proposed transferee; and
 - (ii) Financial assurance for decommissioning information required by [10 CFR] 30.35.

As described in ADAMS package accession number ML22087A437, the direct transfer of control of licensed activities will result by the transfer of control of the operation of the Mitchell Plant from Kentucky Power to the Wheeling Power Company. Currently, the Mitchell Plant is owned 50% by the Wheeling Power Company, and 50% by Kentucky Power who currently operates the Mitchell Plant. Both Wheeling Power and Kentucky Power are holding companies under American Electric Power Company. Wheeling Power Company will remain a 50% owner but will become responsible for operating the Mitchell Plant. The corporate structure and personnel at the Mitchell Plant will remain the same, and Wheeling Power Company will be the owner of the Mitchell Plant. Kentucky Power will remain a 50% owner of the Mitchell Plant but will no longer be involved in operation of the plant; and a future sale of Kentucky Power is expected. The NRC staff finds that the licensee request adequately provides a complete and clear description of the proposed transaction, consistent with 10 CFR 30.34(b) and Chapter 5 and Appendix E of NUREG-1556, Vol. 15, Rev. 1. The sufficiency of the description is evaluated below.

The request for a direct transfer of ownership was posted for public comment on the NRC website for 30 days in accordance with 10 CFR Part 2, Subpart M and as described in NRC's Regulatory Issue Summary 2014-08, Revision 1. No comments were received from members of the public.

Kentucky Power is not required to have financial assurance for decommissioning because of the types and amount of material authorized in its license. The NRC staff finds that the licensee's request adequately provided information for financial assurance for decommissioning, consistent with 10 CFR 30.34(b) and Chapter 5 and Appendix E of NUREG-1556, Vol. 15, Rev. 1.

Further, the NRC conducted an inspection of Kentucky Power on November 16-17, 2017, at the Mitchell Plant. The NRC identified no violations of the specific License No. 47-31210-01. One violation of the general license authorized per 10 CFR 31.5(a) was identified: in violation of 10 CFR 31.5(c)(2), the licensee failed to have leak tests of gauges (authorized under the general license) performed by a person holding a specific license pursuant to parts 30 and 32 of 10 CFR or from an Agreement State to perform such activities (ML18040A421 and ML18066A573).

Additionally, as described in its request, Wheeling Power Company commits that it:

- A. will not change the plant processes, locations, facilities, and equipment authorized in the NRC license;
- B. will not change the personnel involved in licensed activities;
- C. will not change the radiation safety officer listed in the NRC license;
- D. will not change the radiation safety program authorized in the NRC license;
- E. will keep regulatory required surveillance records and decommissioning records; and
- F. Will abide by all constraints, license condition, requirements, representations and commitments identified in and attributed to the existing license.

Based on these commitments, the NRC staff finds that the licensee request adequately documents the constraints, license conditions, requirements, representations, and commitments made by the transferee, consistent with 10 CFR 30.34(b) and Chapter 5 and Appendix E of NUREG-1556, Vol. 15, Rev. 1.

There is no change in the Mitchell Plant organizational structure as a result of the transfer of control of operations from Kentucky Power to the Wheeling Power Company, each of whom has

owned, and will continue to own, 50% of the Mitchell Plant. In addition, both are holding companies under the American Electric Power Company, which possesses multiple registrations for devices possessed under the general license of 10 CFR 31.5. The NRC staff used the guidance provided by the NRC's Office of Nuclear Material Safety and Safeguards' "Checklist to provide a basis for confidence that radioactive materials will be used as specified on the application," January 29, 2019 revision. The purpose of this checklist is for the NRC to obtain reasonable assurance from new license applicants or NRC licensees transferring control of licensed activities that the licensed material will be used for its intended purpose and not for malevolent use. Therefore, for security purposes, Wheeling Power Company is considered a known entity because of its co-ownership of the Mitchell Plant and the activities under the general license of the parent company of both Kentucky Power and the Wheeling Power Company.

An environmental assessment for this action is not required because this action is categorically excluded under 10 CFR 51.22(c)(21).

The staff has reviewed the request for a direct transfer of control of 47-31210-01. The NRC staff finds that the direct transfer of control is in accordance with Section 184 of the AEA and 10 CFR 30.34(b) and consents to the transfer. Please note that you will need to notify us promptly, in writing, after the transaction has been finalized and include a signed copy of the transfer of Operations and Maintenance Responsibility for the Mitchell Power Plant confirming completion of the transaction. If this planned transfer has not been consummated within 30 days of the date of this letter, please notify us in writing.

Future changes in the licensee's name, licensed use, licensed materials, licensed location, persons responsible for licensed material, or other changes to the corporate organizational structure require submission of a request to amend the license or a request to transfer the license. NRC approval must be received prior to implementation of any such proposed change.

In accordance with 10 CFR 2.390, a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC website at <https://www.nrc.gov/reading-rm/adams.html>. If you have any questions regarding this letter, please contact Betsy Ullrich at (240) 704-4575 or by electronic mail to Elizabeth.Ullrich@nrc.gov.

Thank you for your cooperation in this matter.

Sincerely,

Betsy Ullrich, Senior Health Physicist
Commercial, Industrial, R&D
and Academic Branch
Division of Radiological Safety and Security
Region I

License No. 47-31210-01
Docket No. 030-37381
Mail Control No. 630505

cc: Chad B. Weatherson, Radiation Safety Officer

WHEELING POWER COMPANY, ACCEPTANCE OF NOTIFICATION OF CHANGE OF OWNERSHIP, MAIL CONTROL NO. 630505 DATED AUGUST24, 2022

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SUNSI Review Complete: Betsy Ullrich

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