

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

In the Matter of the Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company (Perry Nuclear Power Plant, Unit 1); Order Approving Application Regarding Merger Agreement Between DQE, Inc., and Allegheny Power System, Inc.

I

The Cleveland Electric Illuminating Company (CEI), Centerior Service Company (CSC), Duquesne Light Company (DLC), Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Toledo Edison Company are the licensees of Perry Nuclear Power Plant, Unit 1 (PNPP). CEI and CSC act as agents for the other licensees and have exclusive responsibility for and control over the physical construction, operation, and maintenance of PNPP as reflected in Facility Operating License No. NPF-58. The Nuclear Regulatory Commission (NRC) issued License No. NPF-58 on March 18, 1986, pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50). The facility is located on the shores of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

II

Under cover of a letter dated August 1, 1997, DLC submitted an application for consent under 10 CFR 50.80 regarding a proposed merger of DQE, Inc. (the parent holding company of DLC), and Allegheny Power System, Inc. which would result in DQE, Inc. becoming a wholly owned subsidiary of Allegheny Power System, Inc. Allegheny Power System, Inc. would change its name to Allegheny Energy, Inc. (Allegheny Energy). CEI, CSC, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Toledo Edison Company are not involved in the merger. Supplemental information was submitted by letter dated October 30, 1997.

Under the proposed merger, DLC will become an indirect subsidiary of Allegheny Energy by reason of DQE, Inc. becoming a subsidiary of Allegheny Energy. DLC and the other current licensees will continue to hold the license, and no direct transfer of the license will result from the merger. On October 21, 1997, a Notice of

Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** (62 FR 54655). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 21, 1997 (62 FR 54657).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application and letters of August 1, 1997, and October 30, 1997, the NRC staff has determined that the proposed merger will not affect the qualifications of DLC as holder of Facility Operating License No. NPF-58, and that the transfer of control of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated March 11, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the Commission approves the application regarding the merger agreement between DQE, Inc. and Allegheny Power System, Inc. subject to the following:

(1) DLC shall provide the Director of the Office of Nuclear Reactor Regulation with a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from DLC to its first-or second-tier parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent of DLC's consolidated net utility plant, as recorded on DLC's books of account; and (2) should the merger not be completed by December 31, 1998, this Order shall become null and void, unless upon application and for good cause shown, this date is extended.

This Order is effective upon issuance.

IV

By April 17, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and

shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Copies should also be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to John O'Neill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see DLC's application dated August 1, 1997, and supplemental letter dated October 30, 1997, and the safety evaluation dated March 11, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 11th day of March 1998.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98-6973 Filed 3-17-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-275 and 50-323]

In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2); Exemption

I

Pacific Gas and Electric Company, et al. (the licensee) is the holder of Facility Operating License Nos. DPR-80 and DPR-82, which authorize operation of the Diablo Canyon Nuclear Power Plant (DCNPP), Unit Nos. 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules,

regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in San Luis Obispo County, California.

II

Section 50.71 of Title 10 of the Code of Federal Regulations (10 CFR), "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months." The two DCNPP units share a common Final Safety Analysis Report (FSAR); therefore, this rule requires the licensee to update the same document within 6 months after a refueling outage for either unit.

III

Section 50.12(a) of 10 CFR, "Specific exemption," states that * * *

The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of the 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *." The licensee's proposed schedule for FSAR updates will ensure that the DCNPP FSARs will be maintained current within 24 months of the last revision and the interval for submission of the 10 CFR 50.59 design change report will not exceed 24 months. The proposed schedule fits within the 24-month duration specified by 10 CFR 50.71(e)(4). Literal application of 10 CFR 50.71(e)(4) would require the licensee to update the same document within 6 months after a refueling outage for either unit, a more burdensome requirement than intended. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii).

IV

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Pacific Gas and Electric Company an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the DCNPP FSAR within 6 months of each outage. The licensee will be required to submit updates to the DCNPP FSAR within six months after each Unit 2 refueling outage. With the current length of fuel cycles, FSAR updates would be submitted every 24 months, but not to exceed 24 months from the last submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the environment (63 FR 10654).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98-6974 Filed 3-17-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of March 16, 23, 30, and April 6, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 16

Thursday, March 19

2:30 p.m. Affirmative Session (PUBLIC MEETING)

A. Petition for Commission Review of Director's Decision on Paducah Seismic Upgrades Certificate Amendment Request

Week of March 23—Tentative

Monday, March 23

2:30 p.m. Briefing on MOX Fuel Fabrication Facility Licensing (PUBLIC MEETING) (Contact: Ted Sherr, 301-415-7218)

Thursday, March 26

11:00 a.m. Briefing by Executive Branch (Closed—Ex. 1)

2:00 p.m. Briefing on Recent Research Program Results (PUBLIC MEETING)

3:30 p.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of March 30—Tentative

Monday, March 30

2:00 p.m. Briefing by Nuclear Waste Technical Review Board (NWTRB) (PUBLIC MEETING)

Tuesday, March 31

10:00 a.m. Briefing on Fire Protection (PUBLIC MEETING) (Contact: Tad Marsh, 301-415-2873)

3:00 p.m. Briefing by Organization of Agreement States on Status of IMPEP Program (PUBLIC MEETING) (Contact: Richard Bangart, 301-415-3340)

Thursday, April 2

1:00 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (PUBLIC MEETING) (Contact: John Larkins, 301-415-7360)

2:30 p.m. Briefing on Improvements to the Senior Management Meeting Process (PUBLIC MEETING) (Contact: Bill Borchard, 301-415-1257)

Friday, April 3

10:30 a.m. Affirmation Session (PUBLIC MEETING)

Week of April 6

There are no meetings the week of March 6.

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415-1661.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 13, 1998.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary. [FR Doc. 98-7064 Filed 3-13-98; 4:19 pm]

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