

July 7, 1997

SECY-97-144

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director For Operations

SUBJECT: POTENTIAL POLICY ISSUES RAISED BY NON-OWNER-
OPERATORS

PURPOSE:

This paper responds to a staff requirements memorandum of August 14, 1996, in which the Commission asked the staff to examine how the industry's increased interest in using non-owner companies to operate plants will affect licenses, and to identify policy issues for the Commission's consideration.

BACKGROUND:

The NRC solicited public comments on changes in owners or operators of licensed power reactors and on other topics related to restructuring and deregulation in a *Federal Register* Notice published on September 23, 1996, entitled "Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry."

Section IV.C. of the Draft Policy Statement states that, "Other types of transactions, including those involving transfers of operating authority or responsibility to non-licensed organizations, have been considered by the staff on a case by case basis to determine whether 10 CFR 50.80 consent is required." Two of the comments received from the public on the Draft Policy Statement directly addressed this issue and are discussed herein. Other comments on the Draft Policy Statement

were addressed by the staff in SECY-97-117 (Final Policy Statement on Restructuring and Economic Deregulation of the Electric Utility Industry) which was submitted to the Commission on June 3, 1997.

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The first commenter urged the NRC to issue guidance on non-owner operators defining which circumstances would be subject to 10 CFR 50.80 review and which would not. It was felt that continued case-by-case reviews would not be efficient or practical. The second commenter requested a more efficient review process so such restructurings would be reviewed with dispatch and not delayed unnecessarily by a lengthy hearing process. Excerpts from the text of these comments are provided in the Appendix (Attached).

DISCUSSION:

As recently noted in SECY-97-082, "Performance Issues Related to Ownership Structure," the staff has grouped operating reactor units into five groups according to differing ownership and operating arrangements. Group 1 consists of plants with multiple owners of an operating company that owns and also operates a single plant. Three units fall in this group. Group 2 consists of 15 plants that are operated by operating companies that do not own the plants. Group 3 consists of 37 units which are owned by more than one utility company and operated by one of the investor-owned utility owners. Group 4 consists of 44 units that are owned and operated by a single investor-owned utility company. Group 5 consists of 10 units that are owned and operated by governmental authorities. Plants having non-owner operators are included in group 2. The recent trend brought about by deregulation and restructuring for utilities to move to group 2 from the more traditional ownership groups 3, 4, and 5 has raised questions regarding the extent to which 10 CFR 50.80 approval is required. (Note that SECY-97-082 inadvertently omitted Watts Bar from Group 5 and only counted one of the Vogtle units as a Group 2 plant. The numbers above have been changed to include these plants.)

The regulations regarding the transfer of an operating license are provided in 10 CFR 50.80. In general terms, no license or right thereunder can be transferred without written consent from the NRC. Section 50.80 requires that an application for transfer of a license shall include as much of the information described in 10 CFR 50.33 and 50.34 with respect to the identity and

technical and financial qualifications of the proposed transferee as would be required by those sections for an initial license. Information that should be included in license transfer applications includes the applicant's organizational structure, personnel qualifications requirements, technical and financial qualifications, status as an electric utility, and details of any foreign ownership interests.

Where approval is clearly required under Section 50.80, e.g., where the licensed authority to operate a plant is being transferred from one corporate entity to a different entity, the staff would evaluate license transfer applications in accordance with sections of the NUREG-0800 Standard Review Plan, including 13.1.1, "Management and Technical Support Organization," and 13.1.2-13.1.3, "Operating Organization." These sections also implement Regulatory Guide 1.8, "Qualification and Training of Personnel for Nuclear Power Plants," and American National Standard ANSI N18.1, "Selection and Training of Nuclear Power Plant Personnel." Examples include the transfer of the authority to operate the Farley, Hatch, and Vogtle nuclear plants to Southern Nuclear Operating Company. To date these types of transfers have involved related, albeit separate, corporate organizations, such as Georgia Power Company and Southern Nuclear Operating Company.

Staff reviews have also involved transfers from a licensee which is both owner and operator to two licensees, one of which is an owner, the other, the operator, such as the transfer of the River Bend operating license by Gulf States Utilities Company to Entergy Corporation and Entergy Operations, Inc., respectively.

In contrast to the above applications, are those cases where a service company is to be retained to provide management personnel and/or limited operational services. In such cases the staff believes that whether a Section 50.80 review would need to be performed depends on the extent to which operating control is being transferred. If a transfer of control under Section 50.80 is viewed as a transfer of the ultimate authority granted under a license, then it would follow that a licensee who has chosen to hire and use contractors to perform activities under the facility license has not transferred control, as long as the licensee has retained the ultimate power to direct the day-to-day activities

of the contractor, including, for example, the power to terminate such services and direct actions to shut down or start up the reactor. Thus, in those cases similar to the Maine Yankee/Entergy service arrangement, where the service company is providing operations managers who ultimately report to the Maine Yankee board of directors, and who serve at the pleasure of the Maine Yankee board, the staff has concluded that review and approval under Section 50.80 is not required.¹

On the other hand, however, there exists the possibility that a service company wholly unrelated to the existing licensee(s) may be hired (as reflected by a contractual arrangement) to direct operations, assuming day-to-day operational control. The staff views cases involving the provision of operations management by a service company with autonomy in terms of conducting licensed activities, including, for example, directing shutdown and startup, as representing a transfer of operating authority to a new entity. This situation would be considered by the staff to involve a transfer of control. In such cases the new entity would need to be licensed as an operator of the facility following a Section 50.80 review and the issuance of appropriate approvals and license amendments by the staff.

CONCLUSIONS:

The staff believes when control over operations is assumed by a service company under a contract, that a Section 50.80 review and associated licensing actions may be called for, depending on the

¹ Regardless of whether a Section 50.80 review and approval is called for, a licensee that is considering engaging a service company to help it operate its nuclear facility must verify that the contract managers meet the requisite qualifications for their positions, or the licensee should pursue the appropriate method (technical specifications amendment, Quality Assurance program amendment, or 10 CFR 50.59 evaluation) to reconcile any disparity between the committed/required qualifications for a position and the actual qualifications of the new manager(s).

extent of control to be transferred to the operating company. Thus far, there has been very limited experience with wholly independent, non-owner operators and the staff has reviewed these situations on a case-by-case basis. Given the variety of operational and contractual arrangements that potentially exist, the staff considers continuing a case-by-case review of these situations to be the best approach until greater experience can be gained.

COORDINATION:

The Office of the General Counsel (OGC) has reviewed this paper and has no legal objection to the staff's position.

RECOMMENDATIONS:

The staff recommends that the Commission:

Approve the staff's position outlined above concerning when 10 CFR 50.80 consent would be required in cases where service companies are contracted to provide operations management support. If approved, the staff will incorporate this position into the appropriate section of the Standard Review Plan.

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Attachment: Appendix

Appendix - Comments Received

Southern California Edison, commented on the issue of non-owner operating companies as follows:

We urge the NRC to develop and issue guidance pursuant to this policy statement to better define both the circumstances under which entities established to perform operating functions at licensed facilities are subject to 10 CFR 50.80 review and the circumstances that would not require a 10 CFR 50.80 review. These entities could include limited purpose entities formed to perform limited functions such as licensed operator training and qualification, for example, as well as more general purpose entities. They may involve dual-employment personnel of both the entity and of the facility licensee. Such entities may, or may not, be partly or wholly owned by the facility licensees and may perform a range of functions under various relationships with the facility owners. Continued case by case reviews in this area will not be efficient or practical.

The Nuclear Energy Institute's response to the Draft Policy Statement also called for a more efficient review process:

The nuclear industry believes that any transition to greater competition in electricity generation will likely result in the formation of new corporate entities such as joint nuclear operating companies. By focusing resources solely on nuclear power operations, such restructurings will likely enhance nuclear power plant reliability, safety performance, and, in parallel, economic performance. We believe that the public interest is best-served if such restructurings-- which will improve operational reliability and efficiency--are managed with dispatch and not delayed unnecessarily by a lengthy, undisciplined hearing process.

Attachment