

POLICY ISSUE NEGATIVE CONSENT

August 3, 2000

SECY-00-0168

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: PUBLICATION OF FINAL REGULATORY GUIDE ON CRITERION FOR
TRIGGERING A REVIEW UNDER 10 CFR 50.80 FOR NON-OWNER
OPERATOR SERVICE COMPANIES

PURPOSE:

This paper informs the Commission of the staff's progress since the publication of the draft version of this regulatory guide, DG-1086, in December 1999. The staff intends to proceed with publication of the final regulatory guide unless instructed otherwise by the Commission.

BACKGROUND:

In the staff requirements memorandum, resulting from SECY-99-237, dated October 25, 1999, the Commission approved publication of DG-1086, "Criterion for Triggering a Review Under 10 CFR 50.80 for Non-Owner Operator Service Companies." While not endorsing the content of DG-1086, the Commission suggested that stakeholder comments might provide insights that would improve the clarity of the guidance.

REGULATORY GUIDE:

Comments were received from three stakeholders on the DG-1086. The comments expressed support for the issuance of clear criteria for assessing whether arrangements involving non-owner service companies would require NRC approval.

CONTACT:

Michael J. Davis
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301-415-1016

One comment suggested adding a paragraph exempting service arrangements with affiliated companies from any 10 CFR 50.80 review as long as the affiliated company provides only administrative or technical support services, and the affiliate personnel hold positions in the licensees' organization and report to licensee management who retain final decisionmaking authority. The staff did not include this paragraph since the criterion already states this position of final decisionmaking authority and the benefit of including the paragraph was unclear.

Another comment concerned the use of the phrase "transfer of the NRC license from the owner/operator to a service company." In fact, only the NRC operating license would be transferred to the service company, as distinguished from the license to effectively own the facility. The staff changed the text in several places to specify "operating license." These constitute the only substantive changes from DG-1086 published in December 1999.

COORDINATION:

The Office of the Chief Information Officer has reviewed this paper for information technology and information management implications and concurs in it. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections to its content. The Office of the General Counsel has reviewed this paper and has no legal objections to the staff's position.

RECOMMENDATIONS:

The staff intends to proceed with publication of the final regulatory guide. The final regulatory guide will be forwarded to the Office of Nuclear Regulatory Research within 10 working days from the date of this paper unless instructed otherwise by the Commission.

Staff requests action within 10 days. Action will not be taken until the SRM is received. We consider this action to be within the delegated authority of the EDO.

/RA/

William D. Travers
Executive Director
for Operations

Attachment: Regulatory Guide

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/RA/
 William D. Travers
 Executive Director
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Attachment: Regulatory Guide

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REGULATORY GUIDE

Contact: M. J. Davis, 301-415-1016

REGULATORY GUIDE 1.____

CRITERION FOR TRIGGERING A REVIEW UNDER 10 CFR 50.80 FOR NON-OWNER OPERATOR SERVICE COMPANIES

A. INTRODUCTION

According to 10 CFR 50.80, "Transfer of Licenses," the Commission must give its consent in writing before a license for a production or utilization facility may be transferred, assigned, or in any manner disposed of. As nuclear utilities evolve, the NRC recognizes that licensees may pursue various alternative and potentially complex non-owner operator arrangements. With regard to such new arrangements with nuclear operating service companies, whether a licensee must submit an application to NRC for approval under 10 CFR 50.80 depends on the extent to which operating control is being transferred and the degree of autonomy being granted to the operating company. The NRC recognizes that a more detailed criterion (or criteria) for the submission of new arrangements pursuant to 10 CFR 50.80 could be helpful. This guide provides information so that the nuclear industry and the NRC staff may have a common understanding of the criterion for deciding when the use of a non-owner operating service company would require NRC review and approval under the requirements of 10 CFR 50.80.

A draft version of this regulatory guide was published in December 1999 as DG-1086. Public comments were considered in this final version.

The information collections contained in this regulatory guide are covered by the requirements of 10 CFR Part 50, which were approved by the Office of Management and Budget, approval number 3150-0011. The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. DISCUSSION

To date, in most instances involving non-owner operating companies, an existing operations organization was split off from the owner and transferred to a newly formed operating company in connection with a reorganization or merger agreement. These instances include the approval for transfer and license amendments for Farley Units 1 and 2, Hatch Units 1 and 2, and Vogtle Units 1 and 2 when Southern Nuclear Operating Company became the licensed operator of the facilities in place of the previous owners, Alabama Power Company and Georgia Power Company. All three companies are subsidiaries of the Southern Company. A similar example is the approval for transfer and license amendment for River Bend Unit 1 when Entergy Operations, Inc., a subsidiary of Entergy Corporation, became the licensed operator at the same time that Entergy Corporation acquired Gulf States Utilities, the former owner. In each of these cases,

there was no wholesale change of operations personnel, just a transfer of the existing operations organization to a new operating company.

In another example, in early 1997, Maine Yankee Atomic Power Company signed a management services agreement with Entergy Nuclear, Inc., under which Entergy would provide operations management personnel, including the Maine Yankee President and the Vice President, Licensing. The Entergy personnel provided were to become employees of Maine Yankee, while at the same time remaining employees of Entergy Nuclear, Inc., and would serve at the pleasure of and take direction from the Maine Yankee Board of Directors. The Maine Yankee licensee stated in a letter to the NRC that it had concluded that neither the management services agreement with Entergy nor the specific management changes would require prior NRC approval or a change to the Technical Specifications. The NRC staff concurred with this assessment since Maine Yankee retained ultimate safety-related decisionmaking authority and Entergy personnel were to become dual employees of both Maine Yankee and Entergy Nuclear, Inc.

In January 1998, Illinois Power Company (IP) entered into a management services agreement with PECO Energy for nuclear operational support at Clinton Power Station. The service agreement between IP and PECO was similar in certain aspects to the Maine Yankee management services agreement with Entergy Nuclear, Inc. The service agreement stated that PECO management personnel serving at Clinton would be treated as employees of IP for operational and functional purposes and would exercise their authority in the IP organization on behalf of, and subject to the direction of, IP senior management. One PECO manager was appointed by the IP Board of Directors as Chief Nuclear Officer, serving as the senior nuclear manager at Clinton and reporting directly to the Chief Executive Officer and President of IP. PECO also provided additional experienced nuclear managers to assist IP in the operation of the station. All licensed operators at Clinton remained employees of IP alone. The staff agreed with IP's conclusion that, notwithstanding the management services agreement between IP and PECO, IP retained the authority and responsibility for the safe operation of the plant and for regulatory compliance. In addition, PECO would not be performing activities that would require a license. Approval under 10 CFR 50.80 was, therefore, not required.

C. REGULATORY POSITION

The NRC staff has developed a criterion by which the need for NRC review and consent under 10 CFR 50.80 can be judged for nuclear power plant operating entities. NRC review and consent are necessary when an NRC operating license for a nuclear power plant is to be transferred or assigned. The criterion in this guide is to be used to determine whether a nuclear power plant's operating license would effectively be transferred or assigned if the plant's operating entity changes. The criterion is focused on the concept of final decisionmaking authority: If any entity, for example, a service company, provides advice but does not have the authority to make the final decision in a particular area (i.e., a decision that cannot be modified, overruled, or is not subject to reversal by the current licensee), there has been no transfer of operating authority for that area.

A transfer of final decisionmaking authority in certain areas will automatically trigger a 10 CFR 50.80 review. These areas involve the performance of licensed activities or activities that substantially impact licensed activities. If a service company has been retained by a licensee with the authority to control and perform licensed

activities or activities that substantially impact licensed activities, it must be on the license, i.e., it is required to be approved as a licensee. If the service company has final decisionmaking authority in one or more of the following areas, a review would automatically be required.

- Decision to continue operation or shut down for repairs
- Decision to start up the plant
- Authority to make operability determinations for safety-related equipment
- Authority to change staffing levels
- Authority to make organizational changes
- Decision to defer repairs on safety-related equipment
- Authority for quality assurance responsibilities (selecting audits, approving audit reports, accepting audit responses)
- Budget-setting and spending authority
- Authority to control the terms of employment for licensed staff
- Authority over the design control of the facility
- Decision to continue operations or permanently cease operation
- Authority to determine whether NRC approval is needed under 10 CFR 50.59
- Authority to perform maintenance on safety-related equipment
- Authority for the emergency preparedness program
- Authority to approve licensee event reports
- Authority to decide whether to make a 10 CFR 50.72 report

If a threshold review indicates that the new entity is being granted final decision-making authority in any of these areas involving or substantially impacting licensed activities, the existing licensee and new entity must request NRC review and consent under 10 CFR 50.80, and a conforming license amendment under 10 CFR 50.90. If the NRC concludes that the new entity is qualified to become a licensee, an order approving the proposed transfer of the license with respect to operating authority would be issued. The license would be amended upon implementation of the transfer to reflect the new transferee.

The decisionmaking authority regarding whether to continue operation or to shut down for repairs, to start up the plant, and to continue or suspend operations, or to permanently cease operation, as well as authority over the design control of the facility, are considered the major areas that show which entity has authority over licensed activities. Thus, an entity with final authority over any of them must have a license (i.e., be a licensee).

The decisionmaking authority involving operability determinations, 10 CFR 50.59 reviews, and deferral of repairs on safety-related equipment, as well as the responsibility for quality assurance, indicate which entity is running the day-to-day activities on site. An entity with decisionmaking authority in any of these areas would also be considered to have authority over licensed activities and must be on the license.

Decisionmaking authority concerning changes in the staffing level or organizational changes, control of the terms of employment for licensed staff, budget-setting, and spending indicate which entity is in control of financial decisions. An entity with decisionmaking authority in any of these areas would also be considered to have authority over licensed activities and must be on the license.

The transfer of final decisionmaking authority in operational areas that do not involve licensed activities or activities that substantially impact licensed activities is examined collectively to determine whether a 10 CFR 50.80 review is required. It is difficult to identify with precision the point at which an operating service entity is required to be added to the operating license. Clearly, some areas of consideration are more important than others, but the combination of areas is likely to be unique in each operating agreement the NRC reviews. The more operational areas in which an operating entity has final decisionmaking authority, the more likely it is that NRC review and approval of a license transfer and an amendment to add the operating entity to the license are required. Areas that are considered collectively include the following:

- Authority to provide health physics program services
- Authority to provide chemistry program services
- Authority to provide fire protection program services
- Authority for engineering work on safety-related systems
- Authority for maintaining design basis documentation
- Authority for compliance engineering or licensing engineering services

The list of areas discussed above may not be complete. The staff has attempted to identify representative examples of areas that may be considered collectively to determine whether a 10 CFR 50.80 review is required.

In addition to the previously stated criterion, the NRC notes that lines of authority and responsibility in the organizational chain of command are specified in the plant's technical specifications in the administrative controls section (Section 5.0 in the Standard Technical Specifications). The NRC staff expects licensees, when they are considering the use of service company management, to examine their licensing basis to see what management structure, authorities, and responsibilities have been approved. If the lines of authority or responsibilities specified in the technical specifications are being changed, the change would need review and approval by NRC as a license amendment under 10 CFR 50.90. The NRC expects that licensees will ensure that service company personnel meet requirements for education specified in the technical specifications for the positions they will be taking and will seek approval for any license changes that may be necessary, above and beyond any transfer approval and conforming amendment approval.

D. IMPLEMENTATION

This section provides information to applicants and licensees regarding the NRC staff's plans for using this guide.

Except in those cases in which an applicant proposes an acceptable alternative method for complying with specified portions of the NRC's regulations, the method in this active regulatory guide will be used in the evaluation of whether approval of the transfer of a nuclear power plant's operating license should be granted, and whether the operating license should be amended when changes to the plant's operating entity are made.

VALUE/IMPACT STATEMENT

A draft value/impact statement was published with the draft of this guide when it was published for public comment (Task DG-1086, December 1999, accession no. ML9935600482). No changes were necessary, so a separate value/impact statement for Regulatory Guide 1.____

has not been prepared. A copy of the draft value/impact statement is available for inspection or copying for a fee in the NRC's Public Document Room at 2120 L Street NW., Washington, DC, under Task DG-1086.