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February 29, 2000

U.S. Nuclear Regulatory Commission
Rules and Directives Branch
Director, Office of Administration
Washington, DC 20555-0001

Attention: Michael L. Springer

Subject: Comments Concerning Draft Regulatory Guide 1086 "Criterion for Triggering a Review Under 10 CFR 50.80 for Non-Owner Operator Service Companies," (64FR71517, dated December 21, 1999)

Dear Sir:

This letter is being submitted in response to the NRC's request for comments concerning Draft Regulatory Guide 1086 "Criterion for Triggering a Review Under 10 CFR 50.80 for Non-Owner Operator Service Companies," which was published in the Federal Register (i.e., 64FR71517, dated December 21, 1999). The NRC developed this guide so that the nuclear industry and the NRC staff may have a common understanding for deciding when the use of a non-owner operating service company would require NRC review and approval.

AmerGen appreciates the opportunity to comment on Draft Regulatory Guide 1086. We offer the following comments for consideration by the NRC.

Comments

AmerGen favors the issuance of clear criteria for assessing whether arrangements involving non-owner service companies require NRC approval, and it endorses the decision to publish and invite comments on DG-1086. A final guide will contribute significantly to assuring that licensees will be able to assess when such arrangements may require NRC review and approval.

The current draft of DG-1086 includes criteria that may be appropriate when assessing the involvement of a third party service company at a licensee's power plant. Although some of the proposed criteria would not appear to warrant particular weight in assessing the involvement of a service company, the NRC Staff's recent practice in applying these criteria (or similar criteria) has produced reasonable results. Therefore, AmerGen does not find the proposed criteria objectionable. However because the criteria were designed in the context of third party arrangements involving companies unrelated to the licensee, they do not take into account certain inter-affiliate staffing

arrangements which may emerge in connection with the restructuring of the electric utility industry. Alternative inter-affiliate staffing arrangements may become desirable and/or necessary in order to enhance the competitive position of nuclear power plant operations, because under some circumstances significant tax savings and/or other economic or operational advantages may be achieved through staffing arrangements that involve the creation of separate affiliated companies within the same corporate family as the operating licensee, and the utilization of such affiliated companies to perform certain functions.

The application of the current criteria could lead to inappropriate results under circumstances where internal business decisions within the licensee's corporate family lead to staffing arrangements involving affiliated companies. Therefore, AmerGen suggests that these criteria should not apply under such circumstances, *i.e.*, staffing arrangements involving the parent company of the licensee or a wholly owned subsidiary of the licensee, or any entity in which either the parent company or the licensee holds a direct or indirect ownership interest of at least 50% or more. Such staffing arrangements should not require any 10 CFR 50.80 review. In addition, NRC's guidance should also acknowledge that under current policy and practice, administrative or technical support services performed by affiliated companies or third parties do not require any 10CFR50.80 review.

AmerGen suggests that the following paragraph be added at the end of Section C to DG-1086:

> The foregoing criteria do not apply and no 10 CFR 50.80 review is required under circumstances where a licensee employs a staffing model or services arrangement involving an affiliated company, so long as (a) the afffiliated company only provides administrative or technical support services, or (b) the affiliated company provides management or operational services but the affiliate personnel assigned to the licensee under such an arrangement hold positions and titles in the licensee's organization, are responsible to the licensee, and ultimately report to the Board of Directors or Management Committee of the licensee, which retains final decision making authority with respect to the operating license. For purposes of this guidance, the term "affiliated company" includes, but is not limited to, a parent company of the licensee which directly or indirectly has an ownership interest in the licensee of 50% or more, a wholly-owned subsidiary of the licensee, or any entity in which either the parent company or the licensee directly or indirectly holds an ownership interest of 50% or more.

This suggested language is necessary to provide increased flexibility and facilitate the implementation of competitive business models which are likely to emerge with the restructuring of the electric utility industry. For example, for operational, tax or other business reasons, a company may employ a staffing model where all of the personnel assigned to an operating licensee, including technical personnel, licensed operators, managers and supervisors are employees of an affiliate of the licensee, with their salaries and benefits paid for by that affiliate. Certain tax, economic, or operational

advantages may be achieved by such an arrangement. Nevertheless, the affiliate personnel would be assigned to the licensee, would have responsibilities within the nuclear organization of the licensee, and would act under the direction and control of the licensee. Moreover, such personnel are part of the same corporate family, and they are employed by a company that has the same direct or indirect ownership as the licensed facility. The acceptability of such staffing arrangements is perhaps most clear where the personnel assigned to the licensee are employees of the licensee's parent company or a wholly owned subsidiary of the licensee, but other corporate affiliate arrangements should also be acceptable.

Significantly, the NRC recently approved the use of alternate staffing arrangements in connection with the transfer of Public Service Electric and Gas Company's interests in Peach Bottom, Salem and Hope Creek to PSEG Nuclear Limited Liability Company. In its Safety Evaluation dated February 16, 2000, the NRC Staff acknowledged that with respect to Salem and Hope Creek, "[t]he existing nuclear organizations will remain essentially intact, with current employees becoming employees of either PSEG Nuclear, PSEG Power, or a corporate support organization."

With the restructuring of the electric utility industry, nuclear power plant operators will likely consider and implement a variety of business models, including models that involve a third party non-owner operating service company that participates in plant operations or that assumes complete operating authority for a nuclear power plant. The proposed criteria are appropriate for assessing whether or not a 10 CFR 50.80 review should be conducted under such circumstances. However, these criteria should not be applied where a licensee retains complete operating authority, but implements staffing arrangements that involve corporate affiliates rather than companies controlled by third parties.

AmerGen appreciates this opportunity to share with the Commission its views regarding DG-1086. AmerGen welcomes the Commission's continued efforts to establish clear criteria applicable to service arrangements with companies unrelated to the licensee in order to establish the circumstances under which NRC will undertake a 10 CFR 50.80 review, and to provide clear guidance that such criteria should not apply to inter-affiliate staffing arrangements that do not involve any transfer of operating authority.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

James A. Hutton, Jr.
Director - Licensing