

RULEMAKING ISSUE NOTATION VOTE

May 9, 2001

SECY-01-0083

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: PROPOSED RULE TO STANDARDIZE THE PROCESS FOR ALLOWING A LICENSEE TO RELEASE PART OF ITS REACTOR FACILITY OR SITE FOR UNRESTRICTED USE BEFORE NRC HAS APPROVED ITS LICENSE TERMINATION PLAN

PURPOSE:

To obtain Commission approval to publish a proposed rule that would standardize the process for allowing a power reactor licensee to release part of its reactor facility or site for unrestricted use before NRC has approved its license termination plan (LTP). This type of release is called a "partial site release." The proposed rule would provide greater assurance that residual radioactivity would meet the radiological criteria for license termination, even if a licensee released parts of the site before submitting its LTP.

BACKGROUND:

In the NRC review of the proposed sale of property that is currently part of AmerGen Energy Company's Oyster Creek plant site, the NRC staff concluded that current regulations in 10 CFR Part 50 do not address the release of part of a reactor facility or site before NRC approves the licensee's LTP. Because several reactor licensees have expressed interest in selling parts of their sites before NRC approves their LTPs, the staff believes this issue should be resolved generically. In SECY-00-0023, "Rulemaking Plan to Standardize the Process for Allowing a Licensee to Release Part of Its Reactor Facility or Site for Unrestricted Use Before Receiving Approval of Its License Termination Plan," dated February 2, 2000, the staff proposed a rulemaking plan to standardize the process for partial site releases. The

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Commission approved the rulemaking plan in a staff requirements memorandum (SRM) issued on April 26, 2000.

DISCUSSION:

The proposed rule (Attachment 1) would add a new section to 10 CFR Part 50, separate from the current decommissioning and license termination rules. The new section describes the criteria and the regulatory framework that a licensee must use to request NRC approval for a partial site release before NRC approval of its LTP.

The proposed rule focuses on power reactor licensees of operating plants and decommissioning plants. It does not pertain to materials or non-power reactor licensees, nor does it provide for releases under restricted conditions.

In order for the staff to evaluate the adequacy of the licensee's plans for partial site release, the proposed rule requires licensees to submit information necessary to demonstrate the following:

- Compliance with the radiological criteria for unrestricted use of 10 CFR Part 20, Subpart E, Section 1402 (0.25 mSv/yr [25 mrem/yr] and as low as reasonably achievable).
- Continued compliance with all other applicable regulatory requirements that may be affected by the release of property and changes to the site boundary.
- That records of property line changes and the radiological conditions of partial site releases are being maintained to ensure that the dose from residual material associated with these releases can be accounted for at the time of any subsequent partial releases and at the time of license termination.

The approval process by which the property is released depends on the potential for residual radioactivity remaining in the area. For proposed release areas classified as *non-impacted* and, therefore, having no reasonable potential for residual radioactivity, the staff can approve the release of the property by letter, provided the release of the property would have no adverse effect on reactor safety. For areas classified as impacted and, therefore, having some potential for residual radioactivity, the rulemaking requires a licensee to submit release information in the form of a license amendment for approval. The amendment must include demonstration of the licensee's compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402 (0.25 mSv/yr [25 mrem/yr] to the average member of the critical group and as low as reasonably achievable). In both cases, public participation requirements and additional recordkeeping are addressed.

The above approval approach is a departure from that presented to the Commission in SECY-00-0023 in February 2000. At that time, it was thought that if a licensee could demonstrate that the radioactivity associated with any residual material remaining after remediation of impacted areas was no longer distinguishable from the background radioactivity, the approval could be treated in the same manner as a non-impacted area, and the release area could be approved by letter as opposed to license amendment. However, the ability to distinguish residual radioactivity from background depends on the detection of non-background radionuclides or a statistical dose increment above background, such as the 10 CFR Part 20, Subpart E, radiological release criteria. Minimum radionuclide concentrations from licensed operations have been proposed in the

past, however there are no values currently endorsed by the NRC. The proposed release area's classification as either impacted or non-impacted remains a criterion for determining whether the release may be approved by letter, or whether a license amendment is required. Guidance for demonstrating that a proposed release area is non-impacted is contained in NUREG-1575, Revision 1, "Multi-agency Radiation Survey and Site Investigation Manual (MARSSIM)."

Some reactor licenses may contain a license condition or a technical specification with a detailed description of the site boundary (e.g., a site map). Because the site boundary will change, the proposed rule would require these licensees to submit a license amendment application regardless of the potential for residual radioactivity and regardless of the detail of the site boundary description.

As stated in SECY-00-0023, the staff believes that informal Part 2, Subpart L, hearings are appropriate for hearings requested in response to an amendment for a partial site release. The proposed rule for partial site release would add a new paragraph to the existing § 2.1201(a) providing for informal hearings in accordance with Subpart L, if a hearing is conducted for a licensee's planned release for unrestricted use. It is recognized, however, that the Commission has recently approved with comment a proposed rule (SECY-00-0017) that would expand the use of informal hearing procedures to include amendments such as those for partial site releases. An amendment to Part 2, Subpart L, would not be required to permit use of these informal hearing procedures for partial site release amendments, if the proposed rulemaking of SECY-00-0017 is adopted as a final rule. The staff will continue to monitor the progress of the rulemaking and delete the amendment to Part 2 from the final partial site release rule as appropriate.

The proposed rulemaking includes provisions for public participation. The staff will notice receipt of a licensee's proposal for a partial site release regardless of the potential for residual radioactivity, and make the proposal available for public comment. The staff also will hold a public meeting in the vicinity of the site to discuss the licensee's request for approval or license amendment application, as applicable, and obtain comments before approving the release.

Additionally, depending on the nature and extent of comments received on the proposed rule, the staff may hold one or two stakeholder workshops or other public meetings before issuance of the final rule, as a means of soliciting additional industry and public input on the proposed rulemaking.

A regulatory analysis was developed (Attachment 2) that evaluates the need for and the consequences of the proposed rulemaking.

An environmental assessment with a finding of no significant environmental impact is provided in Attachment 3.

In developing the proposed rule, the staff carefully reviewed the comments and guidance in the Commission's SRM of April 26, 2000. Attachment 4 describes how the staff addressed the SRM guidance.

RESOURCES:

Estimated resources necessary to complete this action are 2.75 FTE for NRR (1.25 FTE in FY 2001 and 1.5 FTE in FY 2002) and 0.1 FTE and \$69,000 for NMSS (in FY 2001). These resources are currently budgeted for this purpose.

SCHEDULE:

The proposed schedule milestones for the rulemaking are as follows:

Publish proposed rule: Date of Commission's SRM for proposed rule plus 4 weeks.
Final rule to Commission: Date of Commission's SRM for proposed rule plus 12 months.

COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rulemaking. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed the proposed rule for information technology and information management implications and concurs in it. However, the rule suggests changes in information collection requirements that must be submitted to the Office of Management and Budget (OMB) no later than the day the proposed rule is forwarded to the *Federal Register* for publication.

RECOMMENDATION:

That the Commission:

1. Approve publication in the *Federal Register* of the attached notice of proposed rulemaking (Attachment 1).
2. Certify that this rule, if adopted, will not have a significant impact on a substantial number of small entities and satisfies the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Note:

- a. The Notice of Proposed Rulemaking (Attachment 1) will be published in the *Federal Register* for a 75-day public comment period.
- b. The Regulatory Analysis (Attachment 2) and the Environmental Assessment (Attachment 3) will be available in the Public Document Room.
- c. The Chief Counsel for Advocacy, Small Business Administration, will be informed of the certification regarding economic impact on small entities and the reasons for it, as required by the Regulatory Flexibility Act.
- d. The appropriate congressional committees will be informed.
- e. The proposed rule contains information collection requirements that are subject to review by the OMB. An OMB review package is being prepared and will be submitted to OMB in the near future.

- f. A press release will be issued by the Office of Public Affairs when the proposed rulemaking is filed with the Office of the Federal Register.
- g. Copies of the *Federal Register* notice of proposed rulemaking will be distributed to all power reactor licensees. The notice will be sent to other interested members of the public upon request.
- h. The staff will request comments on the proposed rulemaking package (including the Environmental Assessment [Attachment 3]) from State Liaison Officers.

/RA/

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Attachments:

1. Draft *Federal Register* Notice
2. Draft Regulatory Analysis
3. Environmental Assessment
4. Disposition of SRM-SECY-00-0023 Issues

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Package Accession No.: ML011070028

Commission Paper: ML011070035

Federal Register Notice: ML011070052

Regulatory Analysis: ML011070062

Environmental Assessment: ML011070066

SRM Issue Dispositions: ML011070162

Attachments:

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- 2. Draft Regulatory Analysis
- 3. Environmental Assessment
- 4. Disposition of SRM-SECY-00-0023 Issues

*See pervious concurrence

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