



NUCLEAR ENERGY INSTITUTE

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SENIOR VICE PRESIDENT AND
CHIEF NUCLEAR OFFICER,
NUCLEAR GENERATION

August 23, 2001

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SUBJECT: Public Comment on Preliminary Impact Assessment of Nuclear Industry Consolidation on NRC Oversight

Dear Mr. Lesar:

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI) is submitting the enclosed comments on the Preliminary Impact Assessment of Nuclear Industry Consolidation on NRC Oversight, as requested by the Nuclear Regulatory Commission in the *Federal Register* on June 27, 2001 (66 Fed. Reg. 34293).

We believe the NRC has adequately captured the areas of potential impact as a result of industry consolidation. Please contact me if you have any questions regarding our response.

Sincerely,

Ralph E. Beedle

Enclosure

Template = ADM-013

F-RTDS = ADM-03
Add = H. BERKOW (HNB)



**Public Comment on Preliminary Impact Assessment of Nuclear Industry
Consolidation on NRC Oversight
August 23, 2001**

ISSUE CATEGORY 1: Plant Operational Safety

Issue 1.a: Possible Cost-Cutting Initiatives

The industry agrees that staff monitoring of experience and feedback from current oversight processes should provide early identification of economics-driven issues. The trends program outlined in SECY 01-0111 should be comprehensive enough to identify adverse trends with the caution that thresholds need to be established so as not to identify a constant level of strong performance as an adverse trend because continued improvement is not attained. For several indicators in use, industry performance is at such a high level that continued improvement is not likely.

The industry believes that the drive for improved efficiencies has increased safety and will continue to do so. Analyses show that the most efficient plants are also among the safest.

Issue 1.b: Technology-Related Issues

While the industry agrees that the NRC should continue to monitor this issue, we believe the agency can move faster in adopting risk-informed, performance-based regulatory approaches. There is sufficient evidence that the implementation of the Maintenance Rule has stimulated performance improvements for the high safety significant systems. Additionally, aspects of the new Reactor Oversight Process have also spurred performance improvements in a number of key areas. The industry recommends that the agency take the necessary steps to expedite the application of risk technology and incorporate results-based approaches as a means to monitor its effectiveness.

Issue 1.c: Spent Fuel Storage and Transportation

NRC concludes that current ISFSI licensing and storage cask certification regulations, policies and procedures are sufficient to accommodate situations resulting from industry consolidation, but acknowledges that consolidation could result in an additional number of amendments to existing licenses to increase storage capacity. In its preliminary impact assessment, the NRC also claims it has been able to successfully address applications for new ISFSI licenses and cask certification and amendments. Industry agrees the NRC has been able to work within the constraints of the existing process for issuing licenses and new and amended cask certifications; however, the inefficiencies built into the system result in inordinately long lead times.

For example, casks certifications are granted and amended through the rulemaking process that essentially doubles the time necessary for the NRC to process, review and take action on requests (from 11 to 24 months). These inordinately long lead times have often necessitated submission of last-minute exemptions to address issues such as changes to cask certifications or site-specific issues such as cask pad interfaces which arose after the 24-month time period necessary to submit changes through the normal approval process. NEI has submitted a rulemaking petition to remove the list of approved and amended casks from Part 72. The industry is suggesting that the Director of the Office of NMSS be assigned authority to issue and amend certifications by order, with sufficient opportunity for the public to comment on granting and amending cask certifications. Industry believes the additional number of amendments arising from industry consolidation provide more impetus for NRC to act on the NEI petition to address inefficiencies in NRC's current process.

The extremely conservative simplistic technical bases for cask certifications also adds to the long lead time to review and approve cask amendments by making the burden of proof higher for justifying changes than the risk would indicate is necessary. Many amendments will be necessary to address needs to store fuel with higher initial enrichment and higher burnups. The NRC has an ongoing initiative to develop a PRA for placing fuel in dry casks. Industry commends NRC for taking this step but believes the agency should be making use of risk insights in the interim to make better use of agency and industry technical resources in evaluating modifications to cask designs.

Issue 1.d: Low-Level Radioactive Waste Management

The staff has correctly identified that industry consolidation can and most likely will affect how individual licensees manage low-level waste (LLW). Consolidation will likely strengthen LLW management programs within licensee organizations that have consolidated. An example will be standardized waste packaging and shipping procedures across multiple reactors operated by one large company. We already see these activities in play.

Economies of scale may allow larger operating companies to invest more resources in on-site management or gain favorable contacts for outside management services such as processing and disposal.

The staff has identified several issues resulting from consolidation that will require regulatory action. Examples are the consolidated storage of LLW from multiple reactors within a large operating company at one or several LLW storage facilities. These facilities may already exist, as in the case of TVA, or they may involve new construction.

One large utility has already requested NEI support in evaluating an approach that would allow the collection of LLW from multiple facilities to complete a shipment. This would allow timely management of waste, where under current rules, a single

reactor site may not generate enough waste to justify a shipment of a given waste stream for several years.

The industry concurs with the staff's preliminary impact assessment and recommended follow-up.

Issue 1.e: Emergency Preparedness

Industry is largely in agreement with NRC discussion, preliminary impact assessment and recommended follow-up actions for addressing potential changes to emergency preparedness programs occurring as a result of consolidations. However, the preliminary impact assessment could, in industry's view, be improved by recognizing the role of the ROP in flagging potential safety impacts of EP program changes resulting from consolidation. For example, industry believes that both positive and negative effects of centralized Emergency Operations Facilities will be revealed in the EP PI on drill performance and training.

Issue 1.f: Reliable Off-Site Power

We concur with the NRC's recommended follow-up to monitor developments in the electric utility industry that may affect reliability of off-site power. Communication among the various stakeholders involved in economic deregulation (nuclear generators and system operators) as well as those affected by the changes in the electric utility industry is fundamental.

ISSUE CATEGORY 2: Licensing

Issue 2.a: License Transfer Process

The nuclear industry agrees with the NRC's finding that the license transfer process is efficient, effective and requires no particular changes at this time. Over the last several years, the NRC has created new procedures governing license transfers (in Subpart M); issued a Policy Statement providing guidance to the Atomic Safety and Licensing Boards in the conduct of contested license transfer proceedings; and updated the financial regulations and requirements (on decommissioning funding assurance and financial qualifications, for example) that form the heart of a license transfer review. As a result of these enhancements to the regulatory process, the NRC is well positioned to manage the growing number of license transfer requests received over the last several years.

Issue 2.b: New License Applications, Site Approvals, and Reactivation of Deferred Plants

The next two to three years represent a period in which power companies will make business decisions on the first of what may be many new plant orders. A major factor in these business decisions will be the resolution of any uncertainties

regarding the regulatory process for licensing new plants. We appreciate the efforts of the Commission in pursuing its Part 52 rulemaking to bring greater clarity to the licensing process, and believe there are opportunities where policy decisions would bring greater certainty to the process and improve its effectiveness. In the near-term, the Commission's decision on the applicability of ITAAC to operational programs offers a significant opportunity to bring greater certainty to the process, and to facilitate development of a comprehensive and effective ITAAC verification process. Likewise, timely decisions on the scope of NEPA reviews and treatment of previously reviewed and approved information at existing sites (subjects of recent NEI petitions for rulemaking) would also provide a better basis for industry decisionmaking over the next few years.

The industry is encouraged by the formation of the New Reactor Licensing Project office and the capabilities of the staff being assigned to it. The scope of new plant licensing issues will challenge NRC, the industry, and other stakeholders to raise and resolve policy issues in a timely manner. We see a compelling need for the Commission to stay engaged and provide the same leadership that was key to the success of the Reactor Oversight Process and to establishing an efficient and predictable process for license renewal.

Issue 2.c: License Renewal

The industry is in agreement with NRC's discussion, preliminary impact assessment and recommended follow-up actions to address the impact of consolidation on license renewal.

Issue 2.d: NRC Organizational Structure

The industry is in agreement with the recommended follow-up actions to address the impact of consolidation on NRC's organizational structure. The industry believes that efficiency improvements are possible, particularly for the regional offices, in light of industry consolidation and the implementation of the reactor oversight process.

ISSUE CATEGORY 3: Inspection, Enforcement and Assessment

Issue 3.a: NRC Reactor Oversight Process

We believe that the new Reactor Oversight Process (ROP), as designed and now in effect, provides adequate assurance that the NRC can assess whether there are safety significant performance issues at nuclear power plants which may have resulted from industry consolidation or financial pressures.

A key aspect of the ROP is that it relies on actual safety performance to determine the need for additional NRC inspection and to ensure licensees are operating and managing their facilities in a manner which will maintain public health and safety.

The ROP was specifically designed to distinguish between issues of safety significance (with a very conservative, low level of risk threshold) and issues of little or no safety significance. These safety issues would then be addressed through supplemental inspection, which looks at the effectiveness of the licensee in correcting the problem, and the licensee's ability to identify and correct problems. The program provides a rationale for appropriate increased NRC attention when the facts—safety significant issues or performance indicator data—warrant it. The NRC preliminary impact assessment (and experience to date) appears to support the effectiveness of this approach.

However, there appears to be some concern raised that performance issues could arise “that do not surface until several months after the decisions are implemented,” and that NRC should look into developing an inspection module to assess licensee response to financial pressures. We would disagree with the need for this new inspection module, given that the NRC already has full-time resident inspectors at each site, and also sends additional inspection teams to fulfill the current baseline inspection program. This baseline inspection program resulted in between 1832 and 2409 hours of direct, in the field inspection at each nuclear site in the first year of the ROP—an average of about 5 to 6.7 person-hours a day. In addition, resident inspectors also focus separately on plant status, which involves such activities as staying cognizant of plant conditions and issues, conducting plant and control room walkdowns, and attending licensee status meetings. This activity consumed between 612 and 859 hours, or about 1.7 to 2.4 person-hours a day at each nuclear site.¹ If there were any financial concerns which resulted in cutbacks in staff or reductions in safety-related activities such that there was some *meaningful* impact on safety, the existing residents and baseline inspection programs should clearly identify them.

With regard to the issue of consolidation, we agree with the assessment that experience to date with consolidated licensees has “been well managed and produced positive performance results.” NRC raises another issue concerning whether consolidated entities which cross regional boundaries pose management challenges for the NRC with respect to consistency, coordination, and efficiency of oversight. NRC concludes “ownership or geographic location is not a factor in effective implementation of the inspection program,” and “the ROP is expected to be transparent to industry consolidation.” While we agree with these statements, we believe that issues of NRC consistency and efficiency continue to exist and must be addressed regardless of industry consolidation; in fact, consolidation simply throws a spotlight on regional differences which may have gone unnoticed until there is a management team which spans several regions and can identify NRC inconsistencies and inefficiencies. Thus consolidation may actually result in improved NRC performance.

¹ Data and description of plant status activities taken from SECY-01-0114 Results of the Initial Implementation of the New Reactor Oversight Process, Attachment 13

Issue 3.b: Inspection, Enforcement and Assessment

Revisions to the Regulatory Oversight Process for material licensees should be independent of the ownership or geographic location of the licensed facilities. Although the revisions are as of yet incomplete for major material licensees, we do not believe they should be affected by industry consolidation. The revised process will be based on performance results and should be independent of the plant ownership, licensee size or how the licensee may have achieved efficiencies of operation (through consolidated ownership, standardized "best practices", etc.). Successful implementation of the revised process will, however, require consistent application throughout the country. The NRC must ensure that all Headquarters and Regional staff are instructed to apply the revised process—especially the operation of the Significance Determination Process (SDP) as applied to inspection findings—in a uniform manner to all facilities, regardless of their locations.

Issue 3.c: NRC Enforcement Program

The industry supports the general notion that the enforcement program should be applied consistently among the regions. It is reasonable for the NRC to audit its application of thresholds and review outcomes of factually similar cases to ensure the entire enforcement program is optimally implemented. Additional coordination and communication between the regions and program office is likely to be beneficial now and should not depend on some impact of consolidation.

The NRC recommends monitoring the implementation of the enforcement program and the number of potential violations to assess the Office of Enforcement's workload. This recommendation is sound.

Issue 3.d: NRC Allegation Program

The discussion regarding the NRC's allegation program considers two possibilities. The first is that impact of consolidation could result in a larger number of allegations and could affect cultural initiatives such as maintaining a safety-conscious work environment (SCWE). The NRC posits that additional inspection may be necessary to evaluate whether an SCWE exists or was adversely affected by changes in corporate policies, programs or procedures. The second possibility, described as "equally likely," is that consolidation may result in fewer allegations because of "stronger licensee management and more effective regulatory programs." The NRC reports, however, that experience with consolidation has not yielded any noticeable increase or decrease in allegations.

The industry believes that there is a ready explanation for the lack of a noticeable change in the number of allegations. Members of the industry—larger and smaller—already accord very high priority to maintaining a work environment in which employees freely identify safety issues. The industry recognizes that safe and commercially successful nuclear generation depends on an environment in which the workforce freely identifies and communicates safety concerns to management.

Since the NRC issued its 1996 Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety and Compliance Concerns Without Fear of Retaliation,"² the nuclear industry has devoted substantial resources to promoting SCWEs at nuclear plants. Licensees also have come to understand that implementing effective processes and developing the necessary supervisory skills (to timely respond to and resolve safety concerns and instances of alleged retaliation) are essential to maintaining employee confidence and trust.

The number and breadth of industry actions to achieve an open work environment demonstrate the importance industry management accords this facet of management. For example, nuclear workers are trained to understand their responsibilities to identify safety concerns and to timely and appropriately disposition these concerns; licensees train supervisors and managers on the importance of an open work environment; and licensees have put in place multiple avenues for communicating concerns, including employee concerns programs, hotlines, ombudsman programs, and open door policies. Industry groups also provide opportunities to share information on effective work place initiatives as well as a multitude of other issues related to handling safety concerns.

The NRC recognizes the need to develop an organizational plan to focus on consistent decisionmaking regarding (1) whether to institute an inspection versus referring the allegation back to the licensee, (2) the validity of the allegation and, in turn, its disposition, and (3) determinations of which NRC organization would take the lead for follow-up to programmatic issues. With respect to the first of these issues, the agency should use this opportunity to revise its policy so that allegations will be routinely referred to licensees for resolution. This will allow licensees to address issues at the earliest stage and may avoid the potential escalation that often accompanies an allegation withheld by the NRC. We support the recommendations to develop guidance to assure consistent treatment of similar allegations received in different regions and to set criteria to define the lead organization for follow-up of programmatic issues.

Despite the admission that consolidation to date has not yielded any noticeable increase or decrease in allegations, the Preliminary Impact Assessment section for Issue 3.d.: states:

"The potential increase number of allegations, including those involving discrimination complaints, as well as increased inspection activities to validate corporate cultural issues, e.g. SCWE, may require additional resources dedicated to the allegation program."

Although the focus of this statement is the potential need to assign additional resources to the allegations program, the assumptions underlying this statement bear discussion. First, that there is no reason to assume consolidation will occasion an increase in discrimination allegations. The NRC has acknowledged strong

² See 61 *Fed. Reg.* 24336 (May 16, 1996).

industry performance and impressive, voluntary licensee efforts to foster open work environments. Second, there is no conclusive evidence that the agency's inspection activities are capable of validating the existence of corporate cultural issues. Finally, and most importantly, the thrust of the statement flatly contravenes the Commission's *express determination* not to pursue an SCWE rule. Without issuing a regulation subjected to Administrative Procedure Act notice and comment, the NRC may not force licensees to meet staff-designated SCWE objectives. The NRC should not attempt to regulate work cultures through inspection activities nor use inspection activities as a substitute for a SCWE rule. These appropriate constraints should be borne in mind as the NRC makes its resource decisions.

ISSUE CATEGORY 4: Decommissioning

The industry agrees with the NRC staff's assessment that current decommissioning regulations and policies are sufficiently flexible to accommodate situations resulting from industry consolidation and no further effort is required at this time. The industry would like to underline the importance of the staff's recognition that unique unanticipated circumstances may arise in the future that result in requests for exemptions or require changes in decommissioning regulations or policies. The industry supports the staff's proposed approach of continuing to identify significant policy matters and make appropriate recommendations to NRC management when these policy matters arise instead of attempting to craft generic fixes now to anticipated problems that might not address the circumstances to which they were intended to apply.

ISSUE CATEGORY 5: External Regulatory Interfaces

The industry is in agreement with NRC's discussion, preliminary impact assessment and recommended follow-up actions to address the impact of consolidation on external regulatory interfaces.

ISSUE CATEGORY 6: Fuel Cycle Facilities

The discussion under "Preliminary Impact Assessment" (page 34305) raises issues that lie outside of the NRC's mandate. Concerns about reliance on foreign sources for nuclear fuel and the (possible) closure of Honeywell and Paducah facilities have not been issues of relevance to the NRC—other than how the agency must handle staff reductions or reassignments. Whether non-military needs for enriched uranium are met domestically or from foreign sources has not been a health and safety concern of the NRC. All domestic U₃O₈ production is now controlled by foreign companies—and the consolidation of smaller, independent producers into more financially stable companies should provide the NRC with greater assurance that the licensees can survive periods of market weakness and not imperil future decommissioning and reclamation responsibilities through bankruptcy. We do not see the outsourcing of license work by major material licensees to be a major health and safety concern, so long as the work is performed in accordance with their license terms and conditions.

The increase in nuclear power capacity as a result of power uprates and new plant construction will require more nuclear fuel. This expansion provides an opportunity to introduce more modern production technologies. Consequently, as fuel cycle licensees and certificate holders expand and modernize their facilities to satisfy increases in nuclear fuel demand, a commensurate high priority should be placed on associated license applications.

Nuclear material licenses and certificates place limits on the types and amounts of nuclear material a licensee or certificate holder can possess and on the uses of that material. Recently, the NRC staff appears to be seeking to further limit licenses and certificates to activities specifically described or contemplated at the time of the issuance of the certificate or license. Such a stricture represents an undue burden on material licensees and certificate holders without a commensurate safety benefit. Guidance needs to be provided to eliminate any restrictions on a possession or use material license that do not have a safety basis.

Fuel cycle facilities provide products to international markets and compete with foreign facilities that are regulated to different sets of regulatory standards. Comparatively stringent domestic regulatory requirements may adversely impact the ability of domestic fuel cycle facilities to compete internationally and may unnecessarily undermine the sustenance and a strong domestic nuclear fuel infrastructure. While regulations help ensure safety, they also require the expenditure of resources and delay the implementation of changes in operations necessary to respond to changing market requirements. A more balanced regulatory environment where safety is achieved and unnecessary requirements are eliminated could further advance through international benchmarking of regulatory standards with similar facilities overseas.

Other Facilities

The NRC has focused on the commercial reactors and the major fuel cycle facilities; however, in terms of actual numbers, material licensees constitute the largest number of NRC licensees. These are not addressed in the *Federal Register* notice. There is considerable consolidation in this sector as well. These licensees are considering all means to reduce their overhead expenses. For example, NRC licensing and inspection fees can be reduced through consolidation, combination or elimination of duplicate manufacturing or distribution facilities. This results in fewer licensees, which means less work for the NRC, but also less revenue. Some licensees are consolidating their operations in one or more Agreement States, which has the same impact. The NRC needs to take these facilities into consideration in the evaluation of the impact of more and/or future consolidations.

Consolidation of material licensees in response to economic pressures and the accession of several states to Agreement State status have reduced and will continue to reduce NRC revenues. Concomitant with the reduction in number of licensees (e.g. Part 30, 40 or 70) should be a reduction in NRC FTEs and expenses, for there are simply fewer licensees to oversee and fewer programs to administer.

Consolidation in the industry should prompt a corresponding reduction in Part 170 and 171 fees through realization of efficiencies and synergies. Such changes are not yet apparent, however. For example, placement of the Portsmouth gaseous diffusion facility into a safe, stable configuration and reduction of the workforce by 25% resulted in an increase in the annual FY-00 fee from \$1.12 to \$1.15 million.

ISSUE CATEGORY 7: Financial

Issue 7.a: Foreign Ownership

The industry supports the NRC's position that the statutory prohibition on foreign ownership is an artifact of the early days of nuclear power development, is no longer necessary and should be removed from the Atomic Energy Act. Until that statutory change is made, however, the NRC has demonstrated commendable flexibility in discharging its statutory mandate. The Final Standard Review Plan on Foreign Ownership, Control or Domination (September 28, 1999) provides sufficient regulatory guidance and flexibility until the U.S. Congress makes the necessary amendments to the Act.

Issue 7.b: License Fee Structure

The industry agrees with the NRC staff's finding that there does not appear to be a need to change NRC's fee structure at this time due to industry consolidation. The industry continues to insist, however, that fees charged to licensees should not include the cost of activities that do not directly benefit power reactor licensees.

Issue 7.c: Insurance

The industry does not agree with the staff's finding that rulemaking is necessary to establish an annual requirement to demonstrate a licensee's ability to pay on-site retrospective insurance premiums, which covers on-site property damage, similar to the demonstration required for secondary protection under Price-Anderson in 10 CFR 140.21.

The staff's discussion of this issue notes correctly, "The NRC has programs in place to evaluate a licensee's ... ability to pay retrospective premiums for both liability and on-site insurance." The staff also observes that NRC evaluates a licensee's financial capability to cover its insurance obligations as part of a license transfer proceeding. The staff then concludes, "For those licensees not involved in license transfers, there is no requirement ... for licensees to demonstrate annually their ability to pay on-site insurance premiums."

There is no such requirement, and there is no need to impose any such requirement. Under the terms of the current insurance policies, the retrospective premium payments are limited. A facility would be obligated to make one payment of, at most, between \$10 million and \$14 million. Additionally, studies have demonstrated that the likelihood of a retrospective call, due to the health and

reserves of the insurance company, is extremely small. This is on top of the limited likelihood of an event occurring that would trigger a call.

As a result, there is no justification for any change to NRC regulations, or for any rulemaking initiative, at this time.

Issue 7.d: Joint and Several Liability

The industry accepts the Commission's position on joint and several liability, as articulated in its Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, issued in August 1997. This issue requires no further action as a result of industry consolidation.

Issue 7.e: Bankruptcy Protection

The industry agrees that the issue of licensee bankruptcy requires no further action at this time.

Bankruptcy raises two separate issues: a licensee's ability to generate sufficient funds to operate safely, and a licensee's ability to continue making contributions to its decommissioning fund.

Through its oversight, inspection and enforcement process, the NRC already has programs and procedures in place to detect any degradation in reactor safety performance, and can order shutdown of any nuclear plant if it believes that continued operation represents a threat to public health and safety.

As for decommissioning funding, in every instance involving bankruptcy of a nuclear plant licensee, the bankruptcy trustee has recognized the critical importance of decommissioning funding and permitted continued contributions to the trust fund. There is no reason to believe that this practice will change.

Issue 7.f: Financial Qualifications

The industry does not believe consolidation raises any new significant issues with respect to financial qualifications that NRC doesn't already adequately approve or oversee. The industry believes the NRC's existing regulations and regulatory guidance on financial qualifications is adequate, and provides reasonable assurance that financial stress will not result in degraded power reactor performance. The industry also believes that a consolidated industry is less likely to experience financial stress because a company with a large number of units has higher cash flows and cost coverages than a company operating a single unit. There is no need for new regulatory initiatives in this area.

ISSUE CATEGORY 8: Non-NRC Regulatory Considerations

Issue 8.a: Grid Stability/Reliability

NEI has initiated efforts to improve communication among nuclear generators, transmission organizations and independent system operators to ensure nuclear plant operations are not inadvertently impacted by nuclear industry consolidation, economic deregulation, and separation of generation and transmission functions. This includes communication with local, regional and national entities involved in transmission and distribution of electric power. The NRC's recommendation to monitor the developments within the industry is appropriate.

Issue 8.b: Antitrust Considerations

The industry supports the NRC's position that it need not consider antitrust issues in the context of license transfers, and supports the NRC's position that the statutory requirement in the Atomic Energy Act that the NRC conduct antitrust reviews should be repealed. The industry encourages the NRC to continue to urge the U.S. Congress to remove that statutory requirement in Section 105.c:of the Act.

The industry does not, however, accept the NRC's conclusion that, absent statutory change, "antitrust reviews for new facilities must continue to be conducted."

In creating the NRC's precicensing antitrust review requirement, Congress foresaw the possibility that such reviews would not always be necessary. Subsection 105c(7) establishes a process by which the NRC, with the approval of the Attorney General, can except certain classes or types of applicants from precicensing antitrust review. In so doing, the NRC would still have the authority, and responsibility, under sections 105a and 105b, to refer any possible antitrust issues to the Attorney General.

Because of dramatic changes in the electric power market, the environment in which new nuclear power plants will be built bears little resemblance to that which existed when the antitrust review provisions were enacted.

The Federal Energy Regulatory Commission (FERC), pursuant to the 1992 Energy Policy Act, has opened the wholesale power market to competition, and mandated open access to the transmission system. A new class of merchant power generators has emerged. These merchant generators produce power for sale in competitive wholesale markets, and do not own, or control access to, transmission assets. In light of these changes, the NRC's precicensing antitrust reviews for applications for new nuclear plants from merchant generators are neither necessary nor appropriate.

Given the changes in the competitive electric market, FERC's expanded authority to regulate competition, and the broad authority of the traditional federal antitrust authorities, the NRC, with the approval of the Attorney General, should make a

determination under subsection 105c(7) that the issuance of a license to a merchant generator would not affect the applicant's activities under the antitrust laws. Accordingly, applications for construction permits, operating licenses, or combined operating licenses submitted by merchant generators should be excepted from antitrust review under section 105c.