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August 28, 2001

Michael T. Lesar
Chief, Rules and Directives Branch
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U.S. Nuclear Regulatory Commission
Mail Stop T6-D59
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RE: Comments on the NRC's Preliminary Impact Assessment of Consolidation

Dear Mr. Lesar:

On August 27, 2001, I timely filed the attached comments on the U.S. Nuclear Regulatory Commission's ("NRC") preliminary assessment of the impact of electric utility restructuring and consolidation, 66 Fed. Reg. 34,293 (June 27, 2001), electronically on the NRC's website at <http://www.nrc.gov/NRC/REACTOR/CONSOLIMPACT/index.html>, and via electronic mail to Mr. Herbert N. Berkow of the NRC. The attached hard copy is provided to reflect the formatting of the original comments (which was lost in the version posted to the NRC's website). Please contact me if you have any questions.

Sincerely,



Robert K. Temple

Rtemple - ADM-013

*F-RIIS = ADM-03
Add = H. Berkow (HNB)*

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August 27, 2001

Michael T. Lesar
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RE: **Comments on the NRC's Preliminary Impact Assessment of Consolidation**

Dear Mr. Lesar:

The Nuclear Regulatory Services Group ("NRSG")¹ is pleased to respond to your request for comments on the U.S. Nuclear Regulatory Commission's ("NRC") preliminary assessment of the impact of electric utility restructuring and consolidation. 66 Fed. Reg. 34,293 (June 27, 2001) (*hereinafter* "preliminary impact assessment"). The NRSG commends the NRC Staff on its forward-looking preliminary impact assessment, particularly with respect to its efforts to anticipate and remove unnecessary regulatory burdens and its efforts to properly staff initiatives requiring greater attention in a more deregulated electric utility market. In the comments that follow, the NRSG offers suggestions with respect to certain conclusions and recommended follow-up actions in the preliminary impact assessment, specifically in the categories of Decommissioning; Licensing; Inspection, Enforcement, and Assessment; and Non-NRC Regulatory Considerations.

¹ The Nuclear Regulatory Services Group ("NRSG") is a consortium of nuclear reactor licensees represented by the law firm of Foley & Lardner.

1. Deregulation Assumptions Related to Decommissioning Funding Should Be Eliminated, Recognizing that the Flexibility in Approaches to Decommissioning Funding Methods Addresses a Multitude of Licensee Circumstances

The preliminary impact assessment concludes that, as a result of licensees pursuing license renewal, there will be additional time available for decommissioning cost recovery. See 66 Fed Reg. at p. 34302 (stating that “Consolidation [of the Electric Utility industry] has and will likely continue to result in an increased interest in license renewal. Actions that extend the operation of nuclear power plants will, in general, increase the available time to fund decommissioning if sinking funds are used”). For licensees that remain subject to rate regulation, such a conclusion may result in state public utility commissions presuming that this conclusion will control the future decision making for all licensees subject to their jurisdiction. Such a conclusion could have the effect of eliminating or reducing decommissioning fund collections in rates. At least two state PUCs have lowered rate recovery for decommissioning funds on the assumption that license renewal for all units under their jurisdiction will be obtained.² We encourage the NRC to take a position that avoids prejudicing state commission decisions regarding the future approaches to decommissioning cost recovery by recognizing that license renewal for all nuclear units is not assured until actually approved by the NRC, and that individual licensee and plant circumstances may result in the need to collect decommissioning funds over the current facility licensed life.

At the same time, we support the NRC’s apparent willingness, as expressed in the preliminary impact assessment, to entertain proposals from licensees to continue to use more flexible methods of decommissioning funding. 66 Fed Reg. at p. 34303. It is this flexible approach that appropriately supports the NRC’s conclusion that “current decommissioning regulations and policies are sufficiently flexible to accommodate situations resulting from industry consolidation.” *Id.* For example, in connection with various license transfers resulting from plant sales, the NRC has approved the use of a parent company guarantee as a method of providing financial assurance for a portion of the estimated decommissioning costs. As deregulation and restructuring continue, the NRC should be open to proposals from licensees for flexible approaches to meeting financial assurance requirements for decommissioning.

2. Efficiencies Should be Sought to Address Anticipated Increases in Certain Licensing Actions

The preliminary impact assessment recognizes that the expected number of license renewal applications in the next few years could severely strain Staff resources. 66 Fed Reg. at p. 34298. The NRC should therefore address ways in which the license renewal review

² See Commonwealth Edison Company, Petition for Approval of a Revised Decommissioning Expense Adjustment Rider, Case No. 00-0361, Illinois Commerce Commission Amended Order (Feb. 21, 2001); In the Matter of Arkansas Power and Light Company’s Proposed Nuclear Decommissioning Cost Rider M26 and Proposed Depreciation Rate Reduction Rider M41, Arkansas Public Service Commission Order (Oct. 3, 2000).

process can be further streamlined. For example, the NRC may wish to encourage use of a combined application for plants of similar design. We also recommend that the NRC take advantage of the consolidation in the nuclear industry by adopting a policy of performing single programmatic reviews where common programs are administered by a licensee with multiple plants. These steps are intended to keep license renewal reviews on schedule, while maintaining the currently rigorous review standards. The NRC Staff may also be able to identify other means for streamlining this well-defined process, now that the Generic Aging Lessons Learned ("GALL") report, and Regulatory Guide 1.188, "Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses" have been released in their final form.

As the preliminary impact assessment also recognizes, deregulation is leading to an increased number of power uprate amendment requests, including extended power uprates. 66 Fed Reg. at p. 34297. The NRSRG recommends that the preliminary impact assessment address ways in which the NRC will improve efficiencies in the power uprate review process. We recognize that initiatives are underway to address certain discrete power uprate issues, such as developing draft guidance for measurement uncertainty recapture power uprates. We also recognize that the Commission has directed that the process be expedited. We recommend, nevertheless, that the NRC take advantage of the unique opportunity presented in issuing this preliminary impact assessment to direct development of a new and more efficient paradigm for addressing all types of power uprates and make the process of power uprate application development, review and approval more predictable and easy to follow.

3. The NRC Should Achieve Organizational Efficiency by Shifting Certain Region-based Reactor Oversight Programs to Headquarters

The preliminary impact assessment has addressed NRC Organizational Structure and the Reactor Oversight Process as two separate issues. 66 Fed Reg. at p. 34298-99. The preliminary impact assessment mentions concerns regarding consistent implementation in different regions for both the significance determination and reactor oversight processes. *Id.* It is our view that, with consolidation of the industry, the NRC should be able to achieve greater efficiencies through consolidating its own organization and reducing redundancy in the organizational structure, much as the electric utility industry is doing. As part of the preliminary impact assessment, the NRC should consider approaches to consolidating certain Regional reactor oversight functions in Headquarters, thereby promoting greater consistency in reactor oversight and inspection activities and achieving efficiencies that cannot be achieved by maintaining these activities in four separate regions. Such consolidation will achieve consistency in oversight and inspection activities with the added benefit of keeping the reactor oversight program more risk-informed and performance-based, and therefore focused on the more significant risks.

4. The NRC Should Address the Impacts of Regional Transmission Organization Development on Nuclear Licensees

As part of the restructuring of the electric utility industry, Regional Transmission Organizations ("RTOs") are being formed. RTOs will develop operational policies and procedures which could have an impact on grid stability and reliability and on the efficient operation of nuclear generating sources. In addition to development of rules for short-term reliability, RTOs will be responsible for developing a variety of other rules that can impact the availability and reliability of off-site power supplies, including congestion management, parallel path flow, ancillary services, and system planning and expansion. See FERC Order 2000-A, Order on Rehearing, Regional Transmission Organizations, 65 Fed. Reg. 12088 (Mar. 8, 2000).³ Currently, the preliminary impact assessment addresses off-site power reliability in two areas, Reliable Off-site Power and Grid Stability/Reliability. 66 Fed. Reg. at pp. 34296-97, 34308-09. These discussions focus on the NRC's monitoring efforts in these areas. The NRC should recognize that licensees may need to participate as stakeholders to protect the off-site power needs and other safety interests of power reactors.

Conclusion

As discussed specifically with respect to power uprates in our section 2 above, the NRSRG urges the NRC to use development of the preliminary impact assessment as a basis for consolidating its future agency direction and focus in a number of areas, rather than discretely discussing related issues. We believe that the greatest efficiencies can be achieved by taking such a holistic approach and by stepping away from existing practices, which are continued just because that is the way the agency has always done them. The NRC Staff has demonstrated significant foresight in its efforts thus far and we encourage them to seek additional methods to achieve greater efficiency and reduce unnecessary regulatory burden.

Sincerely,



Daniel F. Stenger
Robert K. Temple

Counsel to the
Nuclear Regulatory Services Group

³ See also, Bangor Hydro-Electric; PJM Interconnection, LLC, 96 FERC ¶ 61,061; PJM Interconnection, LLC, 96 FERC ¶ 61,060; New York Independent System Operator, 96 FERC ¶ 61,059 and Regional Transmission Organizations, 96 FERC ¶ 61,065 (July 12, 2001) (requiring the participants in the proceedings involving the three proposed RTOs in the northeastern United States – New England, New York, and PJM -- to participate in mediation on forming a single Northeastern RTO, and discussing the need for four regional RTOs to control electricity transmission across the entire country).