

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, D.C. 20555-0001

February 15, 2001

**NRC REGULATORY ISSUE SUMMARY 2001-06
CRITERIA FOR TRIGGERING A REVIEW UNDER 10 CFR 50.80
FOR NON-OWNER OPERATOR SERVICE COMPANIES**

ADDRESSEES

All holders of operating licenses for nuclear power reactors.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform licensees of the criteria for determining when the use of contract service operating companies in connection with the operation or maintenance of nuclear power reactors requires approval by the NRC under the regulations governing transfers of licenses in 10 CFR 50.80. This RIS requires no action or written response on the part of an addressee.

BACKGROUND INFORMATION

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 arrangements with non-owner operators. Whether a licensee must submit an application to the 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 more detailed guidance on when to obtain the agency's approval of new arrangements would be helpful. This RIS provides information so that the nuclear industry and NRC staff may have a common understanding of the criteria for deciding when the use of a non-owner operating service company requires NRC review and approval under the requirements of 10 CFR 50.80.

To date, most cases of non-owner operating companies have involved an existing operations organization that split off from the owner and transferred to a newly formed operating company in connection with a reorganization or merger agreement. One example involved the transfer approval 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 replacing Alabama Power Company and Georgia Power Company. All three companies are subsidiaries of the Southern Company. Another example was the transfer approval 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

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Entergy Corporation acquired Gulf States Utilities, the former owner. In each case, there was no wholesale change of operations personnel; the existing operations organization was merely transferred to a new operating company. In each case, the licensees recognized that a 10 CFR 50.80 license transfer review and approval was necessary.

In a further example, in early 1997, Maine Yankee Atomic Power Company (Maine Yankee) signed a management services agreement with Entergy Nuclear, Inc. (ENI), under which ENI would provide operations management personnel, including the Maine Yankee President and the Vice President, Licensing. The ENI personnel provided would become employees of Maine Yankee while remaining employees of ENI and would serve at the pleasure of and take direction from the Maine Yankee Board of Directors. Maine Yankee stated in a letter to the NRC that it had concluded that neither the management services agreement with ENI 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 ENI personnel would become employees of Maine Yankee as well as of ENI.

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 ENI. 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.

In late 1999, several midwestern utilities agreed to combine their operating staffs to form the Nuclear Management Company (NMC). NMC's corporate purpose was to provide services in connection with the operation and eventual decommissioning of licensed nuclear facilities on behalf of and for the benefit of the owner utilities. NMC was established as a Wisconsin limited liability corporation owned equally by Alliant Energy Nuclear, LLC, NSP Nuclear Corporation, WEC Nuclear Corporation, and WPS Nuclear Corporation. Alliant Energy Nuclear, LLC, is a wholly owned subsidiary of Alliant Energy Corporation, the parent holding company of IES Utilities Inc., owner and operator of the Duane Arnold Energy Center. NSP Nuclear Corporation is a wholly owned subsidiary of Northern States Power Company, owner and operator of the Prairie Island and Monticello Nuclear Plants. WEC Nuclear Corporation is a wholly owned subsidiary of Wisconsin Energy Corporation, the parent holding company of Wisconsin Electric Power Company, which owns and operates the Point Beach Nuclear Plant. WPS Nuclear Corporation is a wholly owned subsidiary of WPS Resources, Inc., the parent holding company

of Wisconsin Public Service Corporation, majority owner and operator of Kewaunee Nuclear Plant. In November 2000, Consumers Energy Company, owner and operator of the Palisades Plant, joined the other owners mentioned above in requesting a transfer of operating authority under each respective license to NMC. In each case the owners of the NMC member plants retained ownership of their respective facilities and retained the necessary authority under the licenses to possess the plants. Pursuant to 10 CFR 50.80, the NRC reviewed the transfers and issued conforming license amendments to include NMC as a licensee and to designate NMC as the licensee authorized to use and operate each of the facilities in accordance with the terms and conditions of the licenses.

SUMMARY OF ISSUE

NRC review and consent are necessary when a license for a nuclear power plant or any right thereunder is to be transferred or assigned. The NRC staff has developed criteria for judging whether the use of a different or new nuclear power plant operating entity involves a transfer and requires NRC review and consent under 10 CFR 50.80. The criteria are to be used in conjunction with the concept of final decisionmaking authority: if an entity, for example, a service company, provides advice but does not have the authority to make a final decision (i.e., a decision that cannot be modified, overruled, or is not subject to reversal by the current licensee),¹ there has been no transfer of authority. A senior manager reviewing contractor decisions after the fact would not be considered to have final decisionmaking authority, unless the senior manager could reverse or overrule the contractor decisions.

The following are a list of areas the staff considers in determining whether the transfer of final decisionmaking authority makes 10 CFR 50.80 review necessary:

- 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 for licensed personnel
- Authority to make organizational changes for TS required positions
- 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
- Authority to provide health physics program services

¹ That is, final decisionmaking authority is defined as authority to make a decision that cannot be modified, overruled, or is not subject to reversal except by the decisionmaker.

- 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

This list may not be complete. The staff has attempted to identify representative examples of activities that may require a 10 CFR 50.80 review. Authority for site security program services was not included in the list because service companies handling site security typically do not provide services in other areas. If a service company currently providing security program services were being considered for a contract to provide services in some of the above-listed areas, a 10 CFR 50.80 review may be required.²

It is difficult to identify precisely the point at which an operating service entity must be added to the operating license and thus when a license transfer application must be filed. Clearly, some areas are more important than others, and each operating agreement the NRC reviews is likely to be unique. The more operational areas in which an operating entity has final decisionmaking authority, the more likely it is that NRC must review and approve an application for a license transfer and an amendment to add the operating entity to the license.

BACKFIT DISCUSSION

This regulatory issue summary requires no action or written response. Consequently, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment was not published in the *Federal Register* because the information contained in this RIS was previously published as Draft Regulatory Guide DG-1086 in December 1999. The preliminary criteria were previously published in the *Federal Register* on October 9, 1998 (Vol. 63, No. 196, 54389 - 54391). Public comments on DG-1086 have been incorporated in this RIS.

² The NRC notes that lines of authority and responsibility in the organizational chain of command are specified in the Administrative Controls section of the plant's Technical Specifications (Section 5.0 of the Standard Technical Specifications). The NRC staff expects licensees 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 changes must be reviewed and approved by the NRC as a license amendment under 10 CFR 50.90. The NRC expects that licensees will ensure that service company personnel meet educational and experience requirements 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.

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PAPERWORK REDUCTION ACT STATEMENT

This RIS does not request any information collection. Please contact the lead project manager listed below if there are any questions about this matter.

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List of Recently Issued NRC Regulatory Issue Summaries

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LIST OF RECENTLY ISSUED
NRC REGULATORY ISSUE SUMMARIES

Regulatory Issue Summary No.	Subject	Date of Issuance	Issued to
2001-05	Guidance on Submitting Documents to the NRC by Electronic Information Exchange or on CD-ROM	01/25/01	All holders of operating licenses for nuclear reactors and all vendors who are required to make submittals to the U.S. Nuclear Regulatory Commission (NRC) pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50), "Domestic Licensing of Production and Utilization Facilities."
2001-04	Issuance of Updated Guidance on the Transfer of Ownership or Control of Licensed Activities (NUREG-1556, Volume 15)	01/24/01	All material and fuel cycle licensees.
2001-03	Changes, Tests, and Experiments	01/23/01	All U.S. NRC Part 50 and Part 72 licensees and Part 72 Certificate of Compliance holders.
2001-02	Guidance on Risk-Informed Decisionmaking in License Amendment Reviews	01/18/01	All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.
2001-01	Eligibility of Operator License Applicants	01/18/01	All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.