

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: **BRIEFING ON STATUS OF STAFF ACTIONS ON
INDUSTRY RESTRUCTURING AND
DEREGULATION - PUBLIC MEETING**

Location: **Rockville, Maryland**

Date: **Tuesday, July 30, 1996**

Pages: **1 - 33**

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BRIEFING ON STATUS OF STAFF ACTIONS ON
INDUSTRY RESTRUCTURING AND DEREGULATION

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Tuesday, July 30, 1996

The Commission met in open session, pursuant to
notice, at 2:03 p.m., Shirley A. Jackson, Chairman,
presiding.

COMMISSIONERS PRESENT:

- SHIRLEY A. JACKSON, Chairman of the Commission
- KENNETH C. ROGERS, Member of the Commission
- GRETA J. DICUS, Member of the Commission

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STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:
BRIAN GRIMES, Deputy Director
Division of Reactor Program Management, NRR
DAVID B. MATTHEWS, NRR
JAMES M. TAYLOR, Executive Director
Operations
WILLIAM RUSSELL, Director
Office of Nuclear Reactor Regulation
ROBERT S. WOOD, NRR

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P R O C E E D I N G S

[2:03 p.m.]

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3 CHAIRMAN JACKSON: Good afternoon, ladies and
4 gentlemen. Today, the Commission will be briefed by the NRC
5 staff on its actions on industry restructuring and
6 deregulation and the progress of the staff's evaluation of
7 our regulatory framework as it relates to safe nuclear
8 operations and decommissioning.

9 The electric utility industry has entered a period
10 of deregulation and restructuring that potentially could
11 have profound impacts on the long-term ability of NRC's
12 power reactor licensees to obtain adequate funds to operate
13 but, more particularly, to decommission their nuclear plants
14 safely. The NRC needs to be sure that we are apprised in a
15 timely manner of any potential changes to our licensees or
16 to those who exercise control over them that could affect
17 safety or our safety oversight and whether significant
18 changes in organizational and/or financial support for each
19 plant are contemplated.

20 The Commission is, as stated on previous
21 occasions, concerned about the assurance of decommissioning
22 funding as well as network grid stability with respect to
23 its affect on nuclear plant safety as different corporate
24 entities emerge from restructuring and deregulation.

25 Commissioner Rogers, do you have any opening

1 remarks?

2 COMMISSIONER ROGERS: No.

3 CHAIRMAN JACKSON: Commissioner Dicus?

4 COMMISSIONER DICUS: No.

5 CHAIRMAN JACKSON: If not, Mr. Taylor.

6 MR. TAYLOR: Good afternoon. With me at the table
7 are Bill Russell, Dave Matthews, Brian Grimes and Bob Wood,
8 all from NRR.

9 This is an update of various things the staff has
10 been doing on this general topic. Some actions have been
11 done and many are under way but it is really an update of
12 where we stand.

13 With that thought, I will turn to Bob Wood who has
14 the principal presentation.

15 MR. WOOD: Chairman Jackson, Commissioner Rogers,
16 Commissioner Dicus, could I have the first slide, please?

17 [Slide.]

18 MR. WOOD: What I would like to do today with your
19 indulgence is talk about the action plan, the seven items in
20 the plan, particularly focusing on the policy statement that
21 you received early in July, also on the comments to the
22 advance notice of proposed rulemaking that went out in
23 April, talk briefly about some of the other actions that
24 weren't in the action plan initially and then also just
25 summarize where we stand.

1 [Slide.]

2 MR. WOOD: Slide number 2.

3 As you know, the action plan on utility
4 restructuring and deregulation was issued on February 6,
5 1996. We had seven tasks in that action plan. They
6 addressed our concerns associated with restructuring and
7 rate deregulation, particularly with respect to safety. But
8 there were some considerations with NRC's mandated antitrust
9 reviews as well.

10 We did get two comments on the action plan, one
11 from NARUC, one from NEI. We -- since they were more
12 directed at the substance of what we were doing, we pretty
13 much subsumed those into the comments on the ANPR and we
14 will treat them in that context.

15 Slide 3.

16 [Slide.]

17 MR. WOOD: The proposed draft policy statement,
18 SECY 96-148, you received on July 2. I see it was made
19 available here for distribution. If you would like me to, I
20 can summarize briefly the overview and major points of that
21 policy statement.

22 I think there were four major thrusts in the
23 statement. One that we would confirm that licensees remain
24 electric utilities in the reviews that we do and we would
25 continue to conduct these reviews with respect to financial

1 qualifications, decommissioning funding assurance and also
2 the antitrust reviews.

3 We particularly are concerned about identifying
4 all the direct and indirect owners, parents of licensees, to
5 make sure that we have some chain of control if possible
6 over who are running our plants.

7 We certainly want to establish and continue to
8 maintain sound working relationships with the rate
9 regulators at the state level through NARUC and the state
10 PUCs themselves and at the federal level with FERC and to a
11 lesser extent with the Securities and Exchange Commission.

12 Coupled with the policy statement, we are
13 developing a standard review plan that will address in quite
14 a bit more detail the financial qualifications and
15 decommissioning funding assurance reviews and the antitrust
16 reviews that we proceed with.

17 CHAIRMAN JACKSON: When will that be completed?

18 MR. WOOD: We have it under review. We are
19 waiting to incorporate any Commission comments on the policy
20 statement before we come out for final comment. We hope to
21 have that, the standard review plans, complete by the end of
22 August. We will send them up to you for your information at
23 that point, as we send them out to the public for public
24 comment.

25 MR. RUSSELL: Dr. Jackson, I have also asked to

1 have, in addition to what I will characterize the scope and
2 criteria for our review, to also look at the vehicle that is
3 being used for NRC approval, whether that is an order or a
4 license amendment such that we have a consistent process for
5 handling those. That issue, I only recently identified to
6 the staff and we have to work with OGC and others to address
7 that, to factor that into the standard review plan as well.

8 This material, along with some other issues that
9 are related, are currently undergoing review and dialogue
10 between the general counsel's office and the staff so
11 whether we are able to have a final product up depends on
12 whether we address some of the prior precedents and issues
13 to try and get a consistent process as well as criteria and
14 scope of review.

15 CHAIRMAN JACKSON: But you are tracking along that
16 path?

17 MR. RUSSELL: That's correct.

18 MR. WOOD: Slide 4, please.

19 [Slide.]

20 MR. WOOD: The second task in the action plan was
21 an administrative letter. We sent that out to all power
22 reactor licensees on June 21, 1996. We included copies or
23 sent copies to the CEOs of the companies to make sure it got
24 appropriate attention from the highest level of corporate
25 management as well.

1 The administrative letter focused on licensee
2 obligations to inform the NRC of any ownership and control
3 changes. We also wanted to address the potential resource
4 and scheduling impacts on the NRC of when they decided to
5 submit those applications just to make sure they understood
6 what our constraints were.

7 As part of Task 2, we also, at Commissioner
8 Rogers's direction, I believe, from the January briefing,
9 had a concern about the confidentiality of sensitive
10 financial information. We believe that the process
11 identified in 2.790 is adequate for that purpose. We don't
12 see any particular reason to change that. I think that
13 offers a fair amount of protection of proprietary
14 information. I think we can work within that framework.

15 CHAIRMAN JACKSON: You indicated in what you gave
16 to the Commission that you had initiated action to acquire
17 some additional information from two licensees.

18 As a result of the administrative letter or
19 through any other means, have you received any other
20 information that indicates that any other licensees may now
21 be contemplating restructuring plans?

22 MR. WOOD: Well, yes. As a matter of fact, I got
23 a call last week from the site executive at Trojan relating
24 to the proposed merger between Enron and Portland General
25 Electric and they promised subsequent to that phone call,

1 and he made a few other phone calls to people in the agency,
2 but subsequent to that they sent in an information package
3 on the proposed merger and they are fully cognizant of the
4 fact that they are going to have to go through a formal
5 approval process by us on that merger.

6 CHAIRMAN JACKSON: This was stimulated by the
7 administrative letter?

8 MR. WOOD: Well, he specifically called me
9 because -- Steven Quennoz, because of the administrative
10 letter identifying me as a point of contact. So there was
11 one issue that came directly out of that at least.

12 MR. RUSSELL: That is not the only one that's in
13 the backlog. That information has subsequently come
14 through. I believe it was received in the Commission
15 offices and it's now been forwarded down to the Staff and is
16 under review, but we have others that we are hearing about
17 that have not been finalized yet with submittals.

18 One of the issues that Bob mentioned, and that is
19 resources, if we are the last to hear and they have a
20 particular schedule that they want to execute for financial
21 reasons and yet we don't have the resources available, we
22 want to put them on notice that they had to have early
23 dialogue with us such that we could do the planning, get
24 familiar with, to be able to execute on the schedules that
25 they wish.

1 CHAIRMAN JACKSON: For that reason alone from the
2 licensee perspective, it is useful to be responsive.

3 MR. RUSSELL: That is correct -- or we will end up
4 in a first in, first out, and it may not be on the schedule
5 that they wish and it may have financial implications for
6 them if it transfers across the tax year or some other
7 impact.

8 CHAIRMAN JACKSON: Thank you.

9 MR. WOOD: In the action plan, Task 3 is the
10 development of an option short of rulemaking to report on
11 the status of decommissioning funds.

12 Serendipitously during this whole period of time
13 we had the Financial Accounting Standards Board come out
14 with a proposed standard that seems pretty much on target in
15 terms of requiring utilities to report on the status of
16 funds, the amounts needed, the assumptions used and the
17 projections of what the ultimate decommissioning cost will
18 be, funds accumulated so far in the annual collections and
19 whatever.

20 I understand from FASB's staff that the comment
21 period closed the end of May. They got a little bit over
22 100 comments in. They expect to have a standard out some
23 time in the fall, probably in the late November timeframe.

24 We would propose to develop a regulatory guide
25 endorsing that standard at the time it is made final by

1 FASB. We would expect just because of the administrative
2 process of getting a regulatory guide out it would be some
3 time six months or so after the FASB standard is finalized
4 that we would come out with the regulatory guide, draft
5 regulatory guide, for public comment.

6 CHAIRMAN JACKSON: If you are going to do that, is
7 there any way to parallel the track to some extent based on
8 what you know of the proposed FASB standard even though it
9 is not in the final form?

10 MR. WOOD: We can certainly look into developing a
11 regulatory guide that uses the proposed standard as a draft
12 standard and then finalize that, I suppose.

13 CHAIRMAN JACKSON: I mean it strikes me that that
14 is a useful thing to do, both in the sense of making sure
15 that what we want out there, so to speak, is out there as
16 soon as possible -- that's from our perspective -- but also
17 from the perspective of the licensees, and tracking into
18 what you said, Mr. Russell, it strikes me that the earlier
19 we can have that available then again that helps licensees
20 in any submittals to us.

21 MR. WOOD: Okay.

22 CHAIRMAN JACKSON: But that actually leads me to
23 another question.

24 Typically the FASB standards have to do with
25 things that relate to tax treatments, reporting

1 requirements, et cetera, but these are reporting
2 requirements relative to, say, the SEC or tax filings.

3 MR. WOOD: Right.

4 CHAIRMAN JACKSON: How then does that inform us?
5 I mean are we going to have then access to that? Is the Reg
6 Guide going to address that?

7 MR. WOOD: Yes. The Reg Guide will address that.
8 Right now the NRC has a requirement that we receive power
9 reactor, licensees' annual reports, annual financial
10 reports, and this -- the FASB standard requires them to
11 provide this information in the annual financial reports, so
12 at this stage I think we would get the information through
13 that vehicle and of course we have the parallel process out
14 of the ANPR to have a regular requirement for reporting that
15 information and we may decide either to use the annual
16 financial reports which are already required or have some
17 sort of separate report that would --

18 CHAIRMAN JACKSON: So the FASB standard is going
19 to require this to be specifically in the annual report,
20 because typically --

21 MR. WOOD: Right.

22 CHAIRMAN JACKSON: -- when these sorts of things,
23 like liabilities, et cetera, are discussed or those kinds of
24 financial vulnerabilities for companies, they typically are
25 reported in 10Qs and 10Ks, whereas the annual reports do not

1 necessarily have that degree of specificity in them.

2 MR. WOOD: Right. My understanding is that this
3 is a specific requirement of the FASB standard that would be
4 in the annual reports as well -- the annual reports to
5 stockholders as well as to SEC.

6 CHAIRMAN JACKSON: And then we are going to be
7 creating a mechanism internally to do a regularized review
8 then relative to what is in these reports ourselves, because
9 that was a bit of a hole at an earlier stage --

10 MR. WOOD: Right.

11 CHAIRMAN JACKSON: -- in terms of both the
12 regularity with which we received these and the regularity
13 with which we reviewed what we received.

14 MR. WOOD: Right.

15 CHAIRMAN JACKSON: And are you saying that as part
16 of your action plan that in fact those two things
17 specifically are going to be dealt with?

18 MR. WOOD: That's correct.

19 MR. RUSSELL: One aspect of the notice and comment
20 that we mentioned earlier internally within the Staff and
21 that is while there may be some things we could do to get to
22 a draft Reg Guide sooner, we still have the issues with
23 resolution of comments that come up, and while some of the
24 comments could be similar to the comments that are received
25 by FASB and be repeats and maybe we would adopt the same

1 resolution, there may be others in a regulatory context we
2 have to deal with, so we don't see this as being a
3 significantly expedited --

4 CHAIRMAN JACKSON: Well, there is an expedited one
5 because if you have a draft and that draft is modified as
6 the FASB standard becomes finalized, that means that the
7 part of our process that kicks in where we have things to go
8 out for public comment and having to resolve that, then the
9 earlier we get started, the earlier we can --

10 MR. RUSSELL: That's correct. I was focusing
11 on --

12 CHAIRMAN JACKSON: No, no, no --

13 MR. RUSSELL: -- after the draft was out.

14 CHAIRMAN JACKSON: Right, I am talking about after
15 the draft is out, but my whole point in discussing it with
16 Mr. Wood had to do with the fact of having us have our Reg
17 Guide available at the earliest possible moment to go out,
18 knowing how the rest of the process has to track.

19 MR. RUSSELL: Okay.

20 MR. WOOD: On Task 4 we are having Oak Ridge
21 National Labs update our database in the form of NUREGS on
22 the owners of nuclear power plants and of course the owners
23 of the owners as well as the antitrust license commissions
24 and that is on track for the draft NUREGs to come in at the
25 end of September.

1 On page 6, Task 5 is the issue of forming a
2 long-term Staff level liaison function with the economic
3 regulators, both at the state and federal level.

4 As you know, Chairman Jackson, you signed out
5 three letters over the past few months -- one to NARUC in
6 April, one to FERC on July 12th, and the SEC on July 2nd.

7 We haven't gotten any formal response yet from
8 them but I --

9 CHAIRMAN JACKSON: Yes, we have -- from SEC.

10 MR. WOOD: Oh, okay. I haven't seen it yet. I'm
11 sorry.

12 CHAIRMAN JACKSON: That is very recent so you
13 wouldn't know yet.

14 MR. WOOD: Another point. We learned recently
15 where NARUC is developing a conference specifically on rate
16 deregulation and restructuring.

17 We intend to fully participate in that.

18 We do engage in biweekly conference calls with the
19 NARUC staff Subcommittee on Nuclear Issues and Waste
20 Disposal. That committee/subcommittee also focuses on rate
21 deregulatory issues and from what I can gather, there are
22 about 13 different state PUCs represented on that
23 subcommittee so we are getting a good cross-section of the
24 state PUCs at the staff level and it's a good vehicle for
25 them.

1 CHAIRMAN JACKSON: Let me just follow up my
2 earlier quick comment.

3 In fact, we have gotten a formal response from the
4 SEC and Chairman Levitt has identified an individual for
5 staff-to-staff contacts and then we just have to follow-up.

6 MR. WOOD: Okay.

7 CHAIRMAN JACKSON: And since we are talking about
8 FASB standards, that's all the better.

9 MR. WOOD: We have had presentations periodically
10 before NARUC and PUC working groups on the action plan.

11 I spoke with the Southeastern Conference, the Ohio
12 Utility Safety Board that addressed these concerns, so our
13 concerns are definitely getting out into the public venue.

14 Page 7, please.

15 On action plan items number -- tasks number 6 and
16 7, task 6 is in two parts. The first part is an evaluation
17 of the legal issues associated with NRC authority and
18 responsibility under 50.80, the authorizing section, Section
19 184 of the Atomic Energy Act. We also had a parallel effort
20 on identifying inconsistencies in parts of NRC regulations,
21 particularly part 50. We have identified a number of those
22 issues, and what we would propose to do on those is to fold
23 those into the proposed rule that comes out of the ANPR, to
24 close those loops, to eliminate those inconsistencies.

25 Task 7, of course, is the ANPR itself. It went

1 out on April 8th, 1996 and, of course, sought comment on the
2 safety issues, particularly with respect to decommissioning
3 related to economic deregulation and restructuring.

4 In the next couple of slides after that, starting
5 with slide 8, I'll try to summarize the comments that we got
6 on the ANPR. Your slide says we got 41 comments. Yesterday
7 we got number 42. So we're already a little bit out of
8 date. But I had it right and it was consistent with the
9 other one, so it doesn't change anything in here.

10 We found that the comments generally were
11 consistent with the earlier briefings that the Commission
12 has had and the views expressed in those briefings.

13 One area where there may be a slight change is
14 that rate deregulation may be accelerating in some states.
15 Massachusetts, New York and a few states are now talking
16 maybe two or three years before full retail wheeling occurs,
17 although I think there is still a consensus that in probably
18 most states it'll be more like five or ten years. A number
19 of commentators brought up the analogies to deregulation of
20 natural gas and telecommunications industries where there
21 were high hopes of doing something very quickly, but the
22 process is taking generally longer than they thought. But
23 whether those analogies are valid or whatever to the
24 electric utility industry we're not sure.

25 CHAIRMAN JACKSON: Let me ask you a quick

1 question. In your opinion, are there any areas where we may
2 be under-estimating at all the impact of industry
3 restructuring as a consequence of deregulation?

4 MR. WOOD: I don't think so, primarily because I
5 believe that all the PUCs that I've talked to very much
6 share our concerns about making sure that adequate
7 decommissioning funds are going to be available, and there
8 are mechanisms that they are evaluating, like transmission
9 access charges, exit fees, other mechanisms that would
10 provide for decommissioning and operating expenses.

11 I think if some PUCs, and I don't expect this to
12 happen, but if some did not take these types of actions, we
13 could address it on an ad hoc basis in terms of whatever
14 changes take place, of course we have to approve, and if we
15 don't see anything there in that process that provides us
16 with a good level of assurance that they're going to have
17 those funds, that we can either deny the restructuring plan
18 or insist that some additional form of assurance be
19 provided.

20 So I think we're going to be in pretty good shape,
21 but --

22 MR. GRIMES: I think there is one area that's
23 coming into more focus for me, and that's outside the
24 financial area, the matter of determining control of the
25 operations and the physical facility of the plant I think

1 we'll have to be focusing on as these changes occur. So
2 we've up to now been thinking mainly about the financial
3 area and the decommissioning funds, but there are going to
4 be a number of combinations of things we'll have to face in
5 terms of findings that control is not transferred, or if it
6 is, that appropriate parties are put on the license.

7 MR. RUSSELL: The context that that came up, to
8 just illustrate with an example, in a meeting that we had
9 with Southern California Edison, in the discussion of the
10 California independent system operator, which would be
11 operating the grid, would have access to that portion of the
12 grid which is in the switchyard which all the lines feed in,
13 et cetera. So there would either have to be contractual
14 relationships that would ensure that the regulatory
15 requirements associated with the switchyard, the facility or
16 that portion of the facility are appropriately maintained.

17 We're just starting dialogue on some of those
18 issues, so it's not a transfer of control of the total
19 license, but it may be transfer of control of a portion of
20 the facility which we would still have concerns. And so
21 those types of issues are starting to come into play,
22 particularly as independent system operators are being
23 discussed in other states in order to support going more to
24 retail open distribution of power.

25 CHAIRMAN JACKSON: Thank you.

1 MR. WOOD: On page 9, as you know, we added in a
2 question concerning the use by -- TVA is the only federal
3 licensee that we have for power reactors to use a statement
4 of intent. Most of the commentors except TVA felt that that
5 was no longer appropriate, not so much from a safety point
6 of view as for reasons of equity. They felt that TVA is
7 going to experience these same competitive pressures, and
8 it's best to level the playing field so they don't have a
9 competitive advantage in this type of area.

10 The commentors generally confirmed what we thought
11 we knew already about the availability of decommissioning
12 insurance for non-accident initiated premature shutdown. It
13 remains infeasible, primarily because in the insurance
14 market, it's a moral hazard, which means that the insured
15 has some sort of control over the event that's being insured
16 against. For example, as they get close to shutdown, if
17 they can collect on their policies, there is an incentive to
18 shut down prematurely and make that collection.

19 We did find that more commentors, including some
20 power reactor licensees, believe that it was appropriate for
21 us to have some sort of periodic reporting requirement.
22 Most of them did refer to the FASB requirements as being
23 appropriate, at the appropriate level of detail and of
24 sufficient detail that would make those adequate.

25 The issue where we proposed having the possibility

1 of some allowance for a credit on earnings on the
2 decommissioning trust funds in the safe storage period most
3 favored that. Most thought it should be ad hoc, although
4 that presents some problems with respect to resource impacts
5 on the NRC if we start screening too much on a plant by
6 plant basis.

7 On page 10, other actions we have taken that were
8 outside the action plan, we, as you remember, we sent two
9 letters in early April to two utilities, Southern California
10 Edison Company and Niagara Mohawk Power Corporation, based
11 on some specific information we received from them on what
12 appeared to be deregulation and restructuring activities
13 where they hadn't come to us.

14 We found out what they were. In Southern Cal
15 Edison's case, it was a proposal based on the California PUC
16 initiative to have them sell off 50 percent of their fossil
17 assets, which I don't think presents a particular problem to
18 us.

19 In the case of Niagara Mohawk, they proposed a
20 plan to the New York Public Service Commission in October of
21 '95 which provided a number of options that they could take
22 to meet increased competition in the state.

23 We have heard initially of some actions on those
24 proposals. We're not at liberty to say yet what those are
25 just based on some ex parte considerations. But we haven't

1 seen any formal proposal yet, and as soon as we do, of
2 course we'd inform the Commission.

3 MR. RUSSELL: There is one aspect that came out of
4 the meetings where I believe the longer term work is going
5 to be needed, and that is how we would deal with something
6 other than an electric utility, what would be the generic
7 approach if you have, for example, an independent power
8 producer that is a nuclear plant selling to an independent
9 system operator power based upon market clearing price of
10 power where you get into a spot market type of activity, and
11 it's not clear that this is so far off as it relates to some
12 partial owners of nuclear plants today, whether they would
13 continue to meet the definition of electric utility.

14 So the need to develop guidance as to how we would
15 handle a review should we see one of those -- and to date we
16 have not. To date, they have all been within the
17 constraints of the definition. But it's clear that that is
18 coming, and we need to be prepared to deal with that.

19 That will raise some interesting questions as it
20 relates to, do they have sufficient funds to handle a period
21 of a shut down for equipment and/or regulatory reasons or
22 would a regulatory shutdown during a period when there's not
23 access to funds create a concern regarding their financial
24 qualifications to operate as compared to decommissioning.

25 So those kinds of issues are going to be issues

1 that we're going to be dealing with in the not distant
2 future as we start moving to independent system operators
3 and nuclear power plants that may be no longer electric
4 utilities.

5 CHAIRMAN JACKSON: So I take it by the fact that
6 you're raising these issues that it's all incorporated into
7 A) your action plan broadly and B) your standard review plan
8 and reg guide development?

9 MR. RUSSELL: It is broadly. We just don't know
10 what the answers are to those areas yet. We realize that
11 they are issues we have to deal with and they are also
12 significant policy issues which would have to come to the
13 Commission.

14 CHAIRMAN JACKSON: Right.

15 MR. RUSSELL: And so we would follow the guidance
16 that is in existence now, that were we were to see such a
17 policy issue on an ad hoc basis, that we would come to the
18 Commission for guidance. We are working those in parallel;
19 it's just not clear, because the first version is to
20 articulate what are the standards, the review approach
21 today? Based upon the regulations, where do we need to
22 address some areas? But anticipating that we could end up
23 in a situation where we have other than an electric utility
24 that's a nuclear power plant licensee, while we see that
25 potentially coming, we don't have the answers yet on how we

1 would deal with all of the issues involved.

2 That is a bigger chunk of the work, depending on
3 when it occurs.

4 MR. WOOD: Okay, page 11, please.

5 Continuing on with some of the other actions.
6 Chairman Jackson, you wrote a memo July 1st to Jim Taylor,
7 and you addressed the issue of parent company guarantees in
8 particular, and the three concerns that you had in terms of
9 their efficacy.

10 Most parent company guarantees do pertain to NMSS
11 licensees. We have three or four, I believe, that research
12 and test reactor licensees use, but it's mostly a parent
13 company guarantee -- the parent company guarantee approach
14 is mostly used by NMSS.

15 We would propose to reevaluate the costs and
16 benefits of any enhancements to the parent company guarantee
17 mechanism. We went through a fairly extensive rulemaking
18 about three or four years ago in that area, and a fairly
19 good database on their failure rates, of parent company
20 guarantees as opposed to some other assurance mechanisms,
21 but we can reevaluate that. And I think if we do find any
22 weaknesses, that is something we can incorporate into the
23 proposed rule that might be developed or will be developed
24 out of the ANPR process under Task 7.

25 CHAIRMAN JACKSON: You should reevaluate it in the

1 sense that parent company guarantees, where the parent
2 company is -- the parent's biggest asset is an electric
3 utility is different than a parent company guarantee where
4 the biggest asset is not an electric utility.

5 MR. WOOD: That's right.

6 CHAIRMAN JACKSON: So these things all track with
7 each other.

8 MR. WOOD: Right.

9 On the last page, page 12, as I mentioned earlier,
10 it appears that the activity regarding rate deregulation
11 appears to be accelerating although it is not consistently
12 true across the board. We still believe that in general, as
13 Bill Russell mentioned, that the action plan adequately
14 addresses these types of activities, and the types of new
15 organizations that may be arising from them.

16 I would like to reiterate, I feel fairly strongly
17 that the state PUCs seem to be sharing our concern on the
18 potential safety impacts of rate deregulation and our
19 proposing and developing and implementing mechanisms to
20 provide adequate decommissioning funds.

21 I think the policy statement and the rulemaking
22 effort begun in the ANPR will enhance decommissioning and
23 funding assurance, and I think one last point, we have heard
24 some mixed things about the chances of legislation. There
25 have been a number of bills proposed or introduced in the

1 House or Senate, and Senator Johnson has introduced one that
2 apparently won't be going anywhere. Congressman Schaefer
3 has, Congressman Markey has. We don't think -- well, we
4 don't want to predict what we will happen, but we are not
5 sure that anything will come of these, but they could have
6 impacts as well, if something passes at the legislative
7 level.

8 That really concludes my presentation.

9 CHAIRMAN JACKSON: Thank you.

10 Let me ask you a couple of questions in the safety
11 area.

12 The NRC Staff position has been that any
13 performance slippage by plants that may be attributable to
14 cost pressures will be tracked by our existing inspection
15 effort and programs, and I noted that there was at least one
16 recent SALP report that tied performance to an apparent
17 tightening of resources in a particular functional area.

18 Have we noticed -- what kind of tracking are we
19 doing, and have we noticed any trends in that regard as a
20 result of what we may think are resource pressures? We are
21 not economic regulators, but have we noticed any common
22 activities?

23 MR. RUSSELL: We have seen some company
24 assessments when companies have gotten into performance
25 problems that have been tied back to resource issues. At

1 this point in time we have done some inspection activity,
2 but they have been isolated where we have looked at
3 performance, or we have seen performance weaknesses, we have
4 seen what has been available by way of capital investment
5 separately. But these were for facilities that their own
6 internal assessments indicated that cost pressure, and so we
7 were gathering facts to support that.

8 Our focus to date has been on observing regulatory
9 performance and determining whether that meets standards or
10 not. It is quite frequent that a company that is planning
11 downsizing activities or some type of restructuring will
12 come to the regional staff or the headquarters staff and
13 describe what that activity is as planned and how they are
14 planning to conduct the transition period. Typically we get
15 strong assurances that this is going to be managed
16 carefully, but again it is a function of how the signal is
17 sent through the organization. If the emphasis is on
18 reducing cost, we have seen some cases of organizations
19 self-imposing restrictions that may not have been intended
20 by the corporate management in order to further reduce
21 costs.

22 So it is a very important area, it is one that we
23 are just starting to look into, but we have, based upon
24 prior Commission direction, not been tracking financial
25 information to correlate financial performance to safety

1 indicators. There is a belief that if cost reduction
2 activities are not managed well, that they can send --
3 unintended signals can have an adverse effect on
4 performance.

5 CHAIRMAN JACKSON: So what you are saying is that
6 you are not specifically trying to make a one-to-one
7 tracking; however, you do have a heightened vigilance?

8 MR. RUSSELL: That's correct. And we have some
9 anecdotal cases that do confirm some of those observations,
10 but we have not done a systematic review to look at
11 financial reports, 10-Ks, other information that might be
12 publicly available to correlate that with trying to safety
13 performance to see if we can see some relationship between
14 the two.

15 CHAIRMAN JACKSON: Are allegations on the rise in
16 instances where there have been restructurings or economic
17 change?

18 MR. RUSSELL: Again, the information is limited.
19 Allegations nationwide, total numbers, are increasing from
20 where we were for the last few years. The information that
21 we reported at the regulatory information conference, which
22 looks at total numbers of technical as well as H&I
23 allegations, indicated that the total was relatively flat
24 through last year, running around 600 to 650. The H&I cases
25 were increasing, but since the policy statement and the

1 visibility that has been applied to it with some of the
2 other things, we have seen an increase, and it looks like it
3 is going to run approaching 800 to maybe 850 at the current,
4 which would be about a 25 percent increase.

5 We have also noticed that in order to achieve some
6 of the timeliness goals and to interact more closely with
7 the individuals that are bringing concerns, that this has a
8 resource implication. So we have proposed to increase
9 resources in the allegation area through our budgeting
10 review process.

11 CHAIRMAN JACKSON: Mr. Rogers?

12 COMMISSIONER ROGERS: Just one aspect of this that
13 is really maybe peripherally connected, and that is the
14 increasing interest of some operators to offer their
15 services to manage other people's plants for them and
16 particularly those that have had a good track record and so
17 on and so forth. And while that is not exactly this
18 question, I think they are going to get tied together pretty
19 soon, and I think that it is well to watch those
20 arrangements from this standpoint as well, because I am sure
21 that one of the considerations will be cost in selecting a
22 nuclear plant manager to come in and supply some kind of
23 management skills; maybe just top level management, I don't
24 know. I suppose there is a whole range of possibilities
25 there that are being considered, but I know that is under

1 very active discussion now in a couple of companies, and I
2 do think that it is well to keep those activities in sight,
3 along with the deregulation question.

4 MR. RUSSELL: We agree. We have had discussions
5 between myself and EDO and with OGC, with some situations
6 that are currently under review. We have had in the past
7 cases where licensees have brought in fairly substantial
8 number of managers under contract to address performance
9 problems. This occurred with the Tennessee Valley Authority
10 in the late 1980 timeframe; it occurred also with Diablo
11 Canyon, with some issues that they had during licensing. We
12 have seen cases of 1s and 2s managers come in where INPO
13 will provide a manager for two years, the individual remains
14 an INPO employee, but functions in a management role at the
15 utility.

16 But your point is one of degree, number, and we
17 are talking about something that is other than a
18 non-owner-operator, which would be unlicensed, which would
19 be like the River Bend precedent, where you have a company
20 operating under contract but is not an owner. So the issue
21 is degree. We are looking at that in the context of our
22 regulations and what would be the requirements for our
23 review. But at this point in time, we don't have a
24 threshold number of how many managers or what positions.
25 What we have to do is look at each one on a case-by-case

1 basis as to what would be the reporting relationships, et
2 cetera. And as long as they operate essentially invisibly
3 to the regulator from the standpoint of their technical
4 qualifications, their performance, et cetera, whether they
5 do it under contract or they do it as an employee is not one
6 that raises substantial issues at this point.

7 Obviously if you brought in an entire management
8 team and changed out the whole team, you would have in
9 effect a de facto transfer of control, so you would have
10 that non-owner-operator scenario. We have not seen that at
11 this point in time.

12 COMMISSIONER ROGERS: It might be coming.

13 MR. RUSSELL: It may very well. We understand
14 that some companies are forming separate companies to in
15 fact perform that service within the nuclear.

16 COMMISSIONER ROGERS: And I think that it has some
17 important pluses in that there is talent that is identified
18 talent and experience is being brought to bear in areas
19 where talent is becoming in short supply. So there are some
20 good reasons for it, but I think it does have to be looked
21 at very carefully.

22 MR. RUSSELL: That could be one of the better
23 diagnostic evaluations from the standpoint of a company
24 coming in that wants to find the problems, identify what the
25 material conditions are, what the budget should be to fix

1 it, within some positive incentive for fixing it and
2 improving performance. So there are other positives as
3 well.

4 CHAIRMAN JACKSON: Commissioner Dicus?

5 COMMISSIONER DICUS: No questions.

6 CHAIRMAN JACKSON: I would like to thank the staff
7 for providing this useful briefing. As deregulation
8 continues to evolve, obviously, the NRC must continue to
9 maintain its interactions with state and federal regulators
10 where our activities overlap and to be forward looking and
11 to anticipate the impacts of the changes in the industry in
12 determining the need for changes, some of which you are
13 already addressing to our existing regulatory framework.

14 As you know, the NRC's primary focus will continue
15 to be on safety, to ensure that plants continue to operate
16 safely and that they can be decommissioned safely and, as
17 such, that decommissioning funds are adequately available.
18 And, as such, it is important that you follow through on
19 your action plan in as timely a manner as possible and that
20 in doing that you focus on a number of things that you have
21 heard, among them the unexpected, things such as Mr. Grimes
22 mentioned and that Commissioner Rogers alluded to, having to
23 do with control of operations and management as well as
24 physician facility control.

25 In focusing on the endorsement of the FASB

1 standards, as we mentioned, it is important that you are
2 focusing on what that means in terms of our access to
3 information. But, as you are working with other agencies,
4 you should be looking for opportunities for us and that
5 sounds like what you are doing in this particular area, to
6 avoid duplicative regulation and reporting requirements.
7 But we have to ensure that we have access to what we need,
8 that we can ensure consistency thereby and we can gain
9 economic savings in fact from the staff working with other
10 agencies.

11 Then, a key thing is that as you work your way
12 through this, and you alluded to this Mr. Russell, that you
13 surface the key policy issues which should come to the
14 Commission so that we can deal with them within the complete
15 regulatory framework and that we don't want to put ad hoc
16 structures into place. You mentioned one potential one, the
17 issue of the other than electric utility, but there are
18 others.

19 So unless Commissioner Rogers, Commissioner Dicus,
20 you have further comments, we are adjourned.

21 [Whereupon, at 2:50 p.m., the briefing was
22 concluded.]

23
24
25

CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING ON STATUS OF STAFF ACTIONS
ON INDUSTRY RESTRUCTURING AND
DEREGULATION (PUBLIC MEETING)

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Tuesday, July 30, 1996

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company.

Transcriber: Rossie J. Fisher

Reporter: Jon Hundley

STATUS OF NRC ACTIONS
IN RESPONSE TO
ELECTRIC POWER INDUSTRY
RESTRUCTURING & RATE DEREGULATION

JULY 30, 1996

BRIEFING OUTLINE

- ACTION PLAN
- OTHER ACTIONS
- SUMMARY

ACTION PLAN GENERAL

- ACTION PLAN FOR ELECTRIC UTILITY RESTRUCTURING ISSUED FEBRUARY 6, 1996.
- SEVEN TASKS ADDRESS CONCERNS ASSOCIATED WITH RESTRUCTURING AND RATE DEREGULATION.
- COMMENTS RECEIVED ON ACTION PLAN.

ACTION PLAN -- TASK 1
POLICY STATEMENT/SRPs

- PROPOSED DRAFT POLICY STATEMENT -- SECY-96-148,
JULY 2, 1996.

- DEVELOPING DRAFT STANDARD REVIEW PLANS (SRPs)
FOR:
(1) FINANCIAL QUALIFICATIONS & DECOMMISSIONING
FUNDING ASSURANCE REVIEWS, AND
(2) ANTITRUST REVIEWS.

ACTION PLAN -- TASK 2
ADMINISTRATIVE LETTER

- AN ADMINISTRATIVE LETTER ISSUED TO ALL POWER REACTOR LICENSEES AND THEIR CEOs ON JUNE 21, 1996.
- FOCUSED ON LICENSEE OBLIGATIONS TO INFORM THE NRC OF OWNERSHIP/CONTROL CHANGES.
- CONFIDENTIALITY OF SENSITIVE FINANCIAL INFORMATION: § 2.790 PROCESS IS ADEQUATE.

ACTION PLAN -- TASKS 3 & 4
NON-RULE REPORTING & TECHNICAL ASSISTANCE

- FINANCIAL ACCOUNTING STANDARDS BOARD (FASB) HAS PROPOSED ACCOUNTING STANDARDS FOR LIABILITIES RELATED TO DECOMMISSIONING.

- STAFF PLANS TO DEVELOP A REGULATORY GUIDE ENDORSING THIS STANDARD.

- TECHNICAL ASSISTANCE CONTRACT WITH THE OAK RIDGE NATIONAL LABORATORY (ORNL) TO UPDATE NUREGs ON:
(1) OWNERS OF NUCLEAR POWER PLANTS; AND
(2) ANTITRUST LICENSE CONDITIONS.

ACTION PLAN -- TASK 5
LIAISON WITH ECONOMIC REGULATORS

- CHAIRMAN'S LETTERS REQUEST STAFF-LEVEL CONTACTS WITH:
 - (1) THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS;
 - (2) THE FEDERAL ENERGY REGULATORY COMMISSION;
AND
 - (3) THE SECURITIES AND EXCHANGE COMMISSION.

- PERIODIC CONFERENCE CALLS WITH NARUC STAFF SUB-COMMITTEE ON NUCLEAR ISSUES -- WASTE DISPOSAL.

- PRESENTATIONS BEFORE NARUC AND PUC WORKING GROUPS ON THE ACTION PLAN.

ACTION PLAN -- TASKS 6 & 7
§ 50.80 & COMPREHENSIVE RULEMAKING REVIEW
DECOMMISSIONING RULEMAKING

- EVALUATE NRC AUTHORITY AND RESPONSIBILITY UNDER § 50.80 AND SECTION 184 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED.
- INCONSISTENCIES IN PARTS OF NRC REGULATIONS: CORRECTIVE RULEMAKING PART OF TASK 7.
- ADVANCE NOTICE OF PROPOSED RULEMAKING ISSUED APRIL 8, 1996.

COMMENTS ON ANPR

- 41 COMMENTS RECEIVED.
- COMMENTS GENERALLY CONSISTENT WITH VIEWS EXPRESSED IN EARLIER COMMISSION BRIEFINGS.
- CONSENSUS SUGGESTS THAT RATE DEREGULATION APPEARS TO BE ACCELERATING.
- MOST BELIEVE THAT NRC CURRENTLY HAS ADEQUATE MECHANISMS TO ENSURE SAFE OPERATIONS AND DECOMMISSIONING.

COMMENTS ON ANPR (CONTINUED)

- MOST STATE THAT NRC SHOULD NO LONGER ALLOW FEDERAL GOVERNMENT LICENSEES TO USE A STATEMENT OF INTENT.
- MOST STATE THAT DECOMMISSIONING INSURANCE FOR NON-ACCIDENT-INITIATED PREMATURE SHUTDOWN REMAINS INFEASIBLE.
- MOST STATE THAT PERIODIC REPORTING TO NRC ON DECOMMISSIONING FUNDING STATUS WOULD BE DESIRABLE, BUT THAT PENDING FASB REQUIREMENTS ARE ADEQUATE.
- MOST FAVOR SOME CREDIT FOR TRUST FUND EARNINGS DURING SAFSTOR, TO BE SET AD HOC.

OTHER ACTIONS

- ADDITIONAL INFORMATION OBTAINED FROM TWO LICENSEES ON RESTRUCTURING ACTIVITIES.
- STAFF CONTINUES TO REVIEW LICENSEE RESTRUCTURING APPLICATIONS BUT HAS NOT FOUND THESE PROPOSALS TO CAUSE LICENSEES TO CEASE BEING ELECTRIC UTILITIES.
- STAFF CONTINUES TO RESPOND TO INQUIRIES FROM RATE REGULATORS, CONGRESSIONAL STAFF, AND THE MEDIA ON NRC RESTRUCTURING ACTIVITIES.
- MEETINGS WITH NEI EXECUTIVE TASK FORCE ON NUCLEAR REGULATORY ASPECTS OF INDUSTRY RESTRUCTURING ON MARCH 29, 1996 AND AUGUST 8, 1996.
- RESOURCE REALLOCATIONS.

OTHER ACTIONS (CONTINUED)

- BROADENED STAFF EVALUATION OF APPROACH TO FINANCIAL ASSURANCE IN 7/1/96 MEMO FROM THE CHAIRMAN.
- INCORPORATE IN PROPOSED RULE.
- STAFF INTENDS TO REEVALUATE THE COSTS AND BENEFITS OF ENHANCEMENTS TO THE PARENT COMPANY GUARANTEE MECHANISM.

SUMMARY

- ACTIVITY REGARDING RATE DEREGULATION APPEARS TO BE ACCELERATING. ACTION PLAN ADEQUATELY ADDRESSES THIS ACTIVITY.
- STATE PUCs APPEAR TO SHARE NRC CONCERNS AND ARE DEVELOPING MECHANISMS TO PROVIDE ADEQUATE DECOMMISSIONING FUNDS.
- POLICY STATEMENT AND RULEMAKING EFFORT BEGUN IN ANPR WILL ENHANCE DECOMMISSIONING FUNDING ASSURANCE.



POLICY ISSUE **(Notation Vote)**

July 2, 1996

SECY-96-148

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: DRAFT POLICY STATEMENT ON RESTRUCTURING AND ECONOMIC DEREGULATION OF
THE ELECTRIC UTILITY INDUSTRY

PURPOSE:

To obtain the Commission's approval for publication of a draft policy statement on restructuring and economic deregulation of the electric utility industry.

BACKGROUND:

In recent years, a number of restructurings and reorganizations have occurred within the electric utility industry. In addition, State public utility commissions (PUCs) have increased pressure for improvements in economic performance by the electric utilities they regulate in order to reduce the electric rates paid by wholesale and retail consumers. The accelerated pace of restructuring and deregulation is intended to further enhance competition and lower electricity rates. The NRC is concerned about how these restructuring and deregulation activities may affect the ability of its power reactor licensees (both owners and operators) to pay for safe plant operations and, particularly, for safe decommissioning when required. The pace and degree of utility restructuring could affect the factual underpinnings of the NRC's previous conclusion that power reactor licensees can reliably accumulate adequate funds for operations and decommissioning over the operating lives of their facilities through rate regulation.

These concerns have prompted the NRC to take a closer look at the adequacy of its financial review processes in the face of deregulation and to implement a

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SECY NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN
THE FINAL SRM IS MADE AVAILABLE

series of actions toward this end. The staff developed an action plan and sent it to the Commission on February 6, 1996.

Activities under this action plan include: (1) issuing a policy statement delineating NRC's expectations with respect to future financial and antitrust reviews; (2) developing standard review plans regarding NRC's financial and antitrust review requirements; (3) establishing staff-level contacts with the National Association of Regulatory Utility Commissioners, the Federal Energy Regulatory Commission (FERC), and the Securities and Exchange Commission (SEC); (4) formulating a periodic decommissioning funding status reporting requirement; (5) updating prior NUREG documents delineating the owners and parents of owners of nuclear power plants; and (6) implementing rulemaking to clarify Commission regulations, if necessary.

DISCUSSION:

This paper forwards a draft policy statement concerning NRC expectations regarding its power reactor licensees as the electric utility industry moves from an environment of rate regulation toward greater competition.¹ The staff recommends issuing the draft policy statement for a 75-day public comment period. The draft policy statement refers to the development of staff Standard Review Plans. The staff expects these to be published for interim use by the time the policy statement is made final.

The draft policy statement addresses the Commission's policy regarding industry restructuring and deregulation. The draft policy statement also summarizes issues related to electric utility industry restructuring and economic deregulation, which are divided into five areas: (1) NRC responsibilities vis-a-vis State and Federal economic regulators, (2) co-owner division of responsibility, (3) financial qualifications reviews, (4) decommissioning funding assurance compliance reviews, and (5) antitrust reviews.

Summaries of the staff's recommended policies in these areas follow:

1. NRC Responsibilities Vis-a-Vis State and Federal Economic Regulators

The draft policy statement recognizes the primary role that State and Federal economic regulators serve in setting rates and levels of funding. However, the NRC has the authority under the Atomic Energy Act to take actions that may affect a licensee's financial situation when warranted to protect the public health and safety. The NRC intends to work and consult with State PUCs, FERC, and SEC to coordinate activities and exchange information.

¹ Another task in the Action Plan, issuing an advance notice of proposed rulemaking on decommissioning funding assurance as affected by deregulation, was published in the Federal Register on April 8, 1996, (61 FR 15427).

2. Co-owner Division of Responsibility

With respect to the responsibilities of co-owners, all co-owners are co-licensees, responsible for complying with the terms of their licenses. Additionally, the NRC is evaluating courses of action to ensure that operating and decommissioning costs are paid by owners.

3. Financial Qualifications Reviews

This section states that the NRC's existing regulatory framework is generally sufficient to reasonably assure the financial qualifications of applicants and licensees. However, the NRC is considering developing additional requirements to ensure against potential dilution of capability for safe operation and decommissioning. The NRC also is considering what types of restructurings and transfers should be subject to review under 10 CFR 50.80.

4. Decommissioning Funding Assurance Compliance Reviews

This section concludes that the NRC's existing decommissioning funding assurance provisions in 10 CFR 50.75 generally provide an adequate regulatory basis to reasonably assure decommissioning funds but states that deregulation may threaten a licensee's ability to continue to collect funds. To address this issue, an advance notice of proposed rulemaking on decommissioning funding assurance was issued on April 8, 1996 (61 FR 15427).

5. Antitrust Reviews

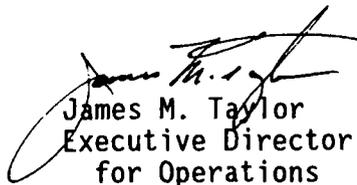
This section states that the NRC's review related to transfer of control under § 50.80 will be used to determine whether a significant change antitrust review will be performed.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper and the enclosed draft policy statement. The Office of the General Counsel is providing, under separate cover, discussions of the legal aspects of ownership transfers and responsibilities of co-owners of nuclear power plants.

RECOMMENDATION:

That the Commission approve issuance of the draft policy statement for a 75-day public comment period.



James M. Taylor
Executive Director
for Operations

Attachment: Draft Policy Statement

DISTRIBUTION:

Commissioners

OGC

OIG

OPA

OIP

OCA

EDO

REGIONS

SECY

Commissioners' comments or consent should be provided directly to SECY by COB Wednesday, July 17, 1996. Commission staff office comments, if any, should be submitted to the Commissioners NLT Wednesday, July 10, 1996, with an information copy to SECY. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Draft Policy Statement on
Electric Utility Industry Restructuring
and Economic Deregulation

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Policy Statement.

SUMMARY: The NRC is seeking comment on the following draft statement of policy with respect to its expectations regarding, and intended approach to, its power reactor licensees as the electric utility industry moves from an environment of rate regulation toward greater competition. The NRC is concerned that rate deregulation and disaggregation resulting from various restructurings involving power reactor licensees could have adverse effects on the protection of public health and safety.

DATE: The public is invited to submit comments on this draft Policy Statement by [insert a date to allow 75 days public comment] _____, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date. On the basis of the submitted comments, the Commission will determine whether to modify the draft Policy Statement before issuing it in final form.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, Attention: Docketing and Service Branch.

Deliver Comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed by using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the draft policy statement are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC _____ subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC _____ subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial telephone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mail." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the _____ Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld can also be accessed through the World Wide Web, like FTP That mode only provides access for downloading files and does not display the NRC _____ Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-1255, e-mail RSW1@nrc.gov; or, for the antitrust aspects of this policy statement, William Lambe, telephone (301) 415-1277, e-mail WML@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose

The purpose of this draft policy statement is to provide a discussion of the NRC's concerns regarding the potential safety impacts on NRC power reactor licensees resulting from the economic deregulation and restructuring of the electric utility industry and the means by which NRC intends to address those concerns. This draft policy statement recognizes the changes that are occurring in the electric utility industry and the importance these changes may have for the NRC and its licensees. The NRC's principal mission is to regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of the public health and safety, to promote the common defense and security, and to protect the environment. As part of carrying out this mission, the NRC must monitor licensee activities and any changes in licensee activities, as well as external factors that may

affect the ability of individual licensees to safely operate and decommission licensed power production facilities.

II. Background

The electric utility industry is entering a period of economic deregulation and restructuring which is intended to lead to increased competition in the industry. Increasing competition may force integrated power systems to separate (or "disaggregate") their systems into functional areas. Thus, some licensees may divest electrical generation assets from transmission and distribution assets by forming separate subsidiaries or even separate companies for generation. Disaggregation may involve utility restructuring, mergers, and corporate spin-offs that lead to changes in owners or operators of licensed power reactors. Such changes may affect the licensing basis under which the NRC originally found a licensee to be financially qualified to construct, operate or own its power plant, as well as to accumulate adequate funds to ensure decommissioning at the end of reactor life.

Rate regulators have typically allowed an electric utility to recover prudently incurred costs of generating, transmitting, and distributing electric services. Consequently, in 1984, the NRC eliminated financial qualifications reviews at the operating license stage for those licensees that met the definition of "electric utility" in 10 CFR 50.2. 49 FR 35747 (Sept. 12, 1984).¹ The NRC based this decision on the assumption that "the rate process assures that funds needed for safe operation will be made available to regulated electric utilities." 49 FR at 35750. However, the NRC recognized that financial qualifications reviews for operating license applicants might be appropriate in particular cases where, for example, "the local public utility commission will not allow the total cost of operating the facility to be recovered through rates." 49 FR at 35751. The Commission also has expressed potential concern with various State proposals to implement economic performance incentive programs.²

¹ Section 50.2 defines "electric utility" as "any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation and distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility.""

² See Possible Safety Impacts of Economic Performance Incentives: Final Policy Statement, 56 FR 33945 (July 24, 1991), for the NRC's concerns relating to State economic performance incentive standards and programs. The NRC understands that States instituted many of these programs as a means of encouraging electric utilities to lower electric rates to consumers. As States deregulate electric utilities under their jurisdictions, these economic performance incentive programs may ultimately be replaced by full market competition.

In its 1988 decommissioning rule, the NRC again distinguished between electric utilities and other licensees by allowing "electric utilities" to accumulate funds for decommissioning over the remaining terms of their operating licenses. NRC regulations require other licensees (with the added exception of State and Federal government licensees of certain facilities) to provide funding assurance for the full estimated cost of decommissioning, either through full up-front funding or by some allowable guarantee or surety mechanism.

A discussion of the current and future NRC review process will be contained in two Standard Review Plans that the NRC plans to issue -- one for financial qualifications and decommissioning funding assurance reviews and the other for antitrust reviews. In addition, the NRC issued an Administrative Letter on June 21, 1996, that informed power reactor licensees of their ongoing responsibility to inform, and obtain advance approval from, the NRC for any changes that would constitute a transfer of the license, directly or indirectly, through transfer of control of the NRC license to any person pursuant to 10 CFR 50.80. This administrative letter also reminded addressees of their responsibility to assure that information regarding a licensee's financial qualifications and decommissioning funding assurance which may have a significant implication for public health and safety is promptly reported to the NRC.

III. Policy Statement

The NRC is concerned with the potential impact of utility restructuring on public health and safety. The NRC has not found a consistent relationship between a licensee's financial health and general indicators of safety such as the NRC's Systematic Assessment of Licensee Performance (SALP). Thus, the NRC has traditionally relied on its inspection process to indicate when safety performance has begun to show adverse trends. Based on inspection program results, the NRC can take appropriate action, including, ultimately, plant shutdown, to protect public health and safety. However, if a plant is permanently shut down, that plant's licensee(s) may no longer have access to adequate revenues or other sources of funds for decommissioning the facility. If rate deregulation and organizational divestiture occur concurrently with the shutdown of a nuclear plant either by NRC action or by a licensee's economic decision, that licensee may not be able to provide adequate assurance of decommissioning funds. Thus, the NRC believes that its concerns with deregulation and restructuring lie primarily in the area of adequacy of decommissioning funds, although it is also concerned with the potential effect that economic deregulation may have on operational safety.

As the electric utility industry moves from an environment of substantial economic regulation to one of increased competition, the NRC is concerned about the pace of restructuring and rate deregulation. Approval of organizational changes and rate deregulation may occur rapidly without the NRC's knowledge. The pace and degree of such changes could affect the factual underpinnings of the NRC's previous conclusions that power reactor licensees can reliably accumulate adequate funds for operations and decommissioning over the operating lives of their facilities. For example, rate deregulation could create situations where a licensee that previously qualified as an "electric

utility" under 10 CFR § 50.2 may, at some point, no longer qualify for such status. At that point, the NRC may require licensees to submit proof pursuant to 10 CFR § 50.33(f)(4) that they remain financially qualified and to meet the more stringent decommissioning funding assurance requirements of 10 CFR § 50.75 that are applicable to non-electric utilities.

Although new and unique restructuring proposals will necessarily involve *ad hoc* reviews by the NRC, the Commission will exercise direct oversight of such reviews to maintain consistent NRC policy toward new entities. The NRC has considered mergers, the formation of holding companies, and the outright sales of facilities, or portions of facilities, to require NRC notification and prior approval in accordance with 10 CFR 50.80 in order to ensure that the transferee is appropriately qualified. For example, the NRC determines whether the surviving organization will remain an "electric utility" as defined in 10 CFR 50.2.

In consideration of these concerns, the NRC will be evaluating deregulation and restructuring activities as they evolve. The NRC will take all appropriate actions to carry out its mission to protect the health and safety of the public and, to the extent of its statutory mandate, to ensure consistency with Federal antitrust laws.

The NRC intends to implement policies and take action as described in this policy statement to ensure that its power reactor licensees remain responsible for safe operations and decommissioning. In summary, the NRC will:

- (1) continue to conduct its financial qualifications, decommissioning funding and antitrust reviews as described in the Standard Review Plans being developed in concert with this policy statement;
- (2) identify all owners, indirect as well as direct, of nuclear power plants;
- (3) establish and maintain staff-level working relationships with State and Federal rate regulators;
- (4) evaluate the relative responsibilities of power plant co-owners/co-licensees; and
- (5) reevaluate its regulations for their adequacy to address changes resulting from rate deregulation.

IV. Issues Related to Electric Utility Industry Restructuring and Economic Deregulation

The NRC believes that its regulatory framework is generally sufficient to address many of the restructurings and reorganizations that will likely arise as a result of electric utility deregulation. In many instances, the NRC's review process will follow the current framework, or will otherwise follow policies consistent with the NRC's current regulations. However, the NRC believes that several other policy issues need to be further evaluated and options developed. Therefore, this section addresses NRC policies with respect to electric utility restructuring and economic deregulation both as these policies can be carried out under current regulations and as matters under consideration for further resolution.

A. NRC Responsibilities vis-a-vis State and Federal Economic Regulators.

The NRC has recognized the primary role that State and Federal economic regulators serve in setting rates that include appropriate levels of funding

for safe operation and decommissioning. For example, the preamble to the 1988 decommissioning rule stated: "The rule, and the NRC's implementation of it, does not deal with financial ratemaking issues such as rate of fund collection, procedures for fund collection, cost to ratepayers, taxation effects, equitability between early and late ratepayers, accounting procedures, ratepayer versus stockholder considerations, responsiveness to change and other similar concerns.... These matters are outside NRC's jurisdiction and are the responsibility of the State PUCs and [the Federal Energy Regulatory Commission] FERC." 53 FR at 24038 (June 27, 1988).

Notwithstanding the primary role of economic regulators in rate matters, the NRC has authority under the Atomic Energy Act of 1954, as amended, (AEA) to take actions that may affect a licensee's financial situation when these actions are warranted to protect public health and safety. To date, the NRC has found no significant instances where State or Federal rate regulation has led to disallowance of funds for safety-related operational and decommissioning expenses. Some rate regulators may have chosen to reduce allowable profit margins through rate disallowances, or licensees have for other reasons encountered financial difficulty.

In order for the NRC to make its safety views known and to encourage rate regulators to continue their practice of allowing adequate expenditures for nuclear plant safety as electric utilities face deregulation, the NRC intends to take a number of actions to increase cooperation with State and Federal rate and financial regulators to promote dialogue and minimize the possibility of rate deregulation or other actions that would have an adverse safety impact. We intend to work and consult with the State PUCs through the National Association of Regulatory Utility Commissioners (NARUC), and with FERC and the Securities and Exchange Commission (SEC) to coordinate activities and exchange information.

B. Co-owner Division of Responsibility

Many of the NRC's power reactor licensees own their plants jointly with other, non-related organizations. Although some co-owners may be only authorized to possess the nuclear facility and its nuclear material, and not to operate it, the NRC views all co-owners as co-licensees who are responsible for complying with the terms of their licenses. *Public Service Company of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 200-201 (1978). The NRC is concerned about the effects on the availability of operating and decommissioning funds, and about the division of responsibility for operating and decommissioning funds, when co-owners file for bankruptcy or

otherwise encounter financial difficulty.³ The NRC is evaluating courses of action to ensure that operating and decommissioning costs are paid by owners.

C. Financial Qualifications Reviews

The NRC believes that the existing regulatory framework contained in § 50.33(f) and in the guidance in 10 CFR Part 50, Appendix C, is generally sufficient at this time to provide reasonable assurance of the financial qualifications of both electric utility and non-electric utility applicants and licensees under the various ownership arrangements of which the staff is currently aware. Licensees that remain "electric utilities" will not be subject to NRC financial qualifications review, other than to determine that such licensees, in fact, remain "electric utilities." However, the NRC is evaluating the need to develop additional requirements to ensure against potential dilution of capability for safe operation and decommissioning that could arise from rate deregulation and restructuring.

Section 184 of the Atomic Energy Act and 10 C.F.R. § 50.80 provide that no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission consents in writing. Such consent is clearly required where a corporate entity seeks to transfer a license it holds to a different corporate entity. See *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1) CLI-92-4, 35 NRC 69 (1992). The staff has advised licensees that agency consent should be sought and obtained under § 50.80 for the formation of a new holding company over an existing licensee. Other types of transactions have been considered by the staff on a case by case basis as to whether § 50.80 consent is required. The NRC is evaluating what types of transfers or restructurings should be subject to § 50.80 review.

D. Decommissioning Funding Assurance Compliance Reviews

The NRC believes that the existing decommissioning funding assurance provisions in § 50.75 generally provide an adequate regulatory basis for new licensees to provide reasonable assurance of decommissioning funds. However, to address this and other issues related to decommissioning funding assurance in anticipation of rate deregulation, the NRC published an advance notice of proposed rulemaking (ANPR). 61 FR 15427 (April 8, 1996).

³ The NRC has had experience with 3 licensees who have had much greater than *de minimis* shares of nuclear power plants and who filed under Chapter 11 of the U.S. Bankruptcy Code: Public Service Company of New Hampshire (PSNH), a co-owner and operator of the Seabrook plant; El Paso Electric Company (EPEC), a co-owner of the Palo Verde plant; and Cajun Electric Power Cooperative (Cajun), a co-owner of the River Bend plant. Both PSNH and EPEC continued their pro rata contributions for the operating and decommissioning expenses for their plants and successfully emerged from bankruptcy. Cajun remains in bankruptcy.

E. Antitrust Reviews

The NRC must be able to accurately identify all owners of its licensees to meaningfully assess whether there have been "significant changes" since the licensing reviews. The NRC anticipates that competitive reviews over the next 5 to 10 years will arise primarily from changes in control of licensed facilities. The regulatory review addressing transfer of control of licenses under 10 CFR § 50.80 will be used to determine whether new owners or operators will be subject to an NRC significant change review with respect to antitrust matters.

Dated at Rockville, Maryland, this _____ day of _____, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.