**IN THE UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

**COMMISSIONERS:**

**Shirley Ann Jackson,** Chairman
**Nils J. Diaz**
**Edward McGaffigan, Jr.**

**In the Matter of:** **Docket No. _____**

**Petition for Rulemaking Regarding**
**Joint and Several Liability of Non-Operating**
**Co-Owners of Nuclear Power Plants.**

# MEMORANDUM OF LAW
# IN SUPPORT OF PETITION FOR RULEMAKING

1. For the reasons set forth below, the Atomic Energy Act of 1954, as amended ("AEA"), does not authorize the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") to issue any rule or order to a group of non-operating co-owners holding them "jointly and severally liable," as those legal terms are ordinarily understood. Instead, if the Commission's reference to joint and several liability is intended to mean that the Commission may, in the stated circumstances, impose a new operational safety requirement on a group of non-operating co-owners which holds all and each of them equally responsible, without regard for *pro rata* sharing agreements, or for the principal responsibility of the operator, then such a requirement would also be unreasonable and unlawful. Moreover, it would be unnecessary for safety.

## I. THE ATOMIC ENERGY ACT IN GENERAL

2. The AEA grants the Commission authority to promulgate rules and orders necessary or desirable to protect and promote the public health and safety. AEA §§ 161b and 161i.[1] Nowhere here, or elsewhere in the AEA, is the Commission granted power to do anything referred to as imposing "liability," let alone something called "joint and several liability." To be sure, the Price Anderson Act ("Act"), as amended (principally AEA § 170) sets forth an elaborate statutory framework for "public liability" and "public liability actions," and provides for various fees and Commission involvement in deferred premiums. But notably absent from this Act is any indication that, in order to protect safety, the Commission may itself impose liability or initiate or adjudicate claims of liability on behalf of the public. Instead, under the Price Anderson Act, as amended, legal actions are brought by injured persons, the rules for decision in public liability actions are derived from state law, to the extent consistent with the AEA, and the U.S. district courts are vested with jurisdiction to adjudicate claims (AEA §§ 11hh, 170).

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[1] These sections of the AEA authorize both rules and orders. The AEA also grants separate authority to the Commission to promulgate rules applicable to its licensees to protect and promote public health and safety. AEA §§ 103a, 103b, 161b, 161i, 161p, 182a, 183, and 187. The Commission may also impose reporting, record-keeping, and inspection requirements by rule or order under AEA § 161o. The purported reservation of power to impose joint and several liability applied to "highly unusual situations." This clearly suggests a reservation of a case-specific ordering power, rather than a power to address a generic problem by rule. Moreover, the Policy Statement, especially considered in conjunction with the statement of NRC counsel, is not a rule.

3. The Independent Offices Appropriation Act of 1952, AEA § 161w, and various Congressional Appropriations acts, grant power to the Commission to impose and collect fees, but this implicit power to create fee liability does not extend to other kinds of liability.

4. The Commission has authority to impose financial qualifications requirements, and has exercised this authority to require that funds be provided for decommissioning. 10 CFR § 50.75. But there is no comparable funding requirement for operation. Moreover, it was never contemplated that these financial qualifications rules would empower the Commission to decommission a plant and impose liability for reimbursement.

5. In sum, there is nothing in the AEA which grants the Commission power to impose any "liability" for safety measures, as that legal term is c[illegible]narily understood, and there is no Commission power under the AEA, comparable to the power of the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to initiate substantive safety measures at a plant at taxpayers' expense, and sue the responsible party or parties for reimbursement. To our knowledge, the Commission has never claimed such power. At most, the purported rese[illegible]ation of power to impose "joint and several liability" can be understood as an effort to reserve the power to impose a regulatory safety obligation on a group of co-owner licensees which requires that all and each of them comply to the same extent.

## II. ADDITIONAL SAFETY REQUIREMENTS

6. The AEA contemplates a proportionality between the scope of the licensed activity and the nature of the safety obligations imposed. For example, the principle statutory basis for the Commission's imposition of additional safety requirements on licensees is AEA §§ 161b and 161i, and both these subsections authorize the imposition of safety measures "to govern" the possession and use of nuclear materials and other AEA-authorized activities. The term "govern" suggests clearly that the additional safety measures must bear a direct relation, or at least be in proportion, to risk posed by the licensed activity. More fundamentally, the imposition of safety requirements, wholly out of proportion to the safety risk of the licensed activity, would be unreasonable and unlawful under 5 U.S.C. § 706.

7. Ownership of a nuclear power plant, without actual possession or operational responsibility or authority, carries no safety risk. Indeed, the AEA as a whole contains little concern for ownership without physical possession. Abolition of government ownership of special nuclear material in 1964 was never considered to be significant for regulatory purposes. Section 184 of the AEA expresses specific concern for direct or indirect transfers only when they involve the "right to utilize or produce special nuclear material," and for the rights of secured creditors only when they are sought to be enforced (by assumption of actual possession of the secured interests). *See* 10 CFR § 50.81(a)(2). Section 170r of the AEA goes even further, making it clear

that persons under a *bona fide* lease cannot be held liable for an incident unless they are in actual possession at the time of the incident.

8. Given the need for proportionality, the lack of safety significance associated with ownership, and the structure of the AEA as a whole, it would be arbitrary, capricious, and unlawful for the Commission to impose onerous safety obligations on persons licensed only to own—and never licensed to physically possess or operate—the plant, merely because the more appropriate subject of enforcement (the person licensed to operate) is in financial difficulty. This is all the more evident given that the Commission has ample authority to impose financial qualifications requirements on persons proposing to operate. AEA § 182a. The problem of retroactivity, discussed below, would make such an imposition even more unreasonable.

## III. RETROACTIVITY

9. As the U.S. Supreme Court has noted:

> "[E]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.... In a free, dynamic, society, creativity in both commercial and artistic endeavors is fostered by a rule of law that gives people confidence about the legal consequences of their actions."

*Landgraf v. USI Film Products*, 511 U.S. 244 at 265-266 (1994). *See also General Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992). ("Retroactive legislation presents

problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions.")

10. Accordingly, a presumption against retroactivity builds on a legal doctrine "deeply rooted in our jurisprudence" and "centuries older than our Republic." *Landgraf* at 265, quoting *Kaiser Aluminum & Chemical Corp., v. Bonjorno*, 494 U.S. 827, 842-844, 855-856 (1990) (Scalia, J., concurring). Thus, the Supreme Court held in *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988) that "congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result."

11. There can be no question that an order imposing onerous safety obligations on a co-owner group, without regard for *pro rata* sharing agreements among them, would, in the words of the Supreme Court, defeat legitimate expectations and upset settled transactions. Co-owners have relied upon *pro rata* sharing arrangements for decades, with implicit if not explicit Commission approval, and the realities of utility restructuring and the emerging market for nuclear power plants make it imperative that these sharing arrangements continue.

12. Under the teaching of *Bowen*, agencies do not have the authority to issue retroactive rules unless such authority is granted explicitly (*i.e.*, the statutory language requires this result). This requirement assures that Congress has made the fundamental policy judgments concerning the proper temporal reach of its laws. *See Landgraf* at 273.

Nothing in the AEA specifically grants the Commission the power to issue retroactive rules, and so the result under *Bowen* is that the Commission lacks such authority.

13. A retroactive rule is one which would "impair any rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf* at 280. A Commission rule which imposed new safety obligations on a group of non-operating co-owners without regard for their *pro rata* sharing agreement would, in effect, impose new duties with respect to past transactions, namely the co-owners' prior acquisition of their ownership interests and their execution of ownership agreements.

14. On the other hand, a rule is not retroactive merely because it applies to cases arising from past conduct. The Supreme Court in *Landgraf* gives, as an example, a law banning gambling as applied to someone who has begun to construct a casino. *Landgraf* at 269, note 24. In such cases, the law is not retroactive because, strictly speaking, it applies only to future conduct (for example, completion of casino construction), even though the future conduct was foreshadowed by conduct antidating the law's enactment. The vast majority of Commission backfits may fall in this category in the sense that they apply to plant operation after the effective date of the backfit, but could never have applied without commencement of operation, an event antidating the backfit. However, the imposition of new requirements on non-operating co-owners without regard for *pro rata* cost-sharing agreements is distinguishable from the usual

backfit. Persons licensed to own or operate have no reasonable expectation that the Commission will never impose additional safety requirements as a condition of continued operation. But, in the case of non-operating co-owners, there was a reasonable expectation, even given the Commission's power to impose additional safety measures, that the Commission would continue to honor *pro rata* cost-sharing agreements in the exercise of this power.

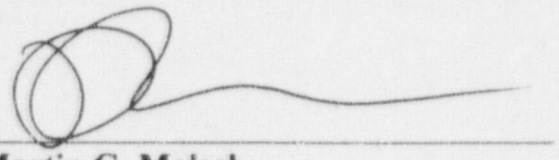
## IV. CONCLUSION

15. The Supreme Court has stated that "[a]ny test of retroactivity will leave room for disagreement in hard cases, and is unlikely to classify the enormous variety of legal challenges with perfect philosophical clarity." *Landgraf* at 270. In the final analysis, any determination that a Commission rule or order is impermissibly retroactive will be made by the courts. However, regardless of the strict legal classification which may be accorded a Commission imposition of joint and several liability, it remains that the fundamental policy underlying the presumption against retroactive laws would apply fully to such an action, since it would deprive co-owners of legitimate expectations and upset settled transactions. Ultimately, this has a direct bearing on the fundamental reasonableness of the Commission action.

16. When the fundamental policy underlying the presumption against retroactivity is taken into account, along with the need for proportionality, the lack of safety risk associated with ownership (and the structure of the AEA as a whole), it is

clear that a Commission imposition of a new operational safety requirement on a non-operating co-owner group, which holds all of them equally responsible without regard for *pro rata* cost-sharing agreements, would be unreasonable and unlawful.

Respectfully submitted,



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**COUNSEL FOR PETITIONERS**

DATED: November 3, 1998

OCA

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-64]

Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. ; Receipt of Petition for Rulernaking

AGENCY: Nuclear Reguiatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. (petitioners). The petition has been docketed by the Commission and has been assigned Docket No. PRM-50-64. The petitioners are all non-operating joint owners of nuclear plants who have concerns about potential safety impacts that could result from economic deregulation and restructuring of the electric utility industry. The petitioners are requesting that the enforcement provisions of NRC regulations be amended to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.

DATE: Submit comments by (75 days following publication in the Federal Register). 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

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before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-7163 or Toll Free: 1-800-368-5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking submitted by the petitioners. The petitioners are all non-operating joint owners of nuclear power plants who are concerned about their potential liability in the event that other co-owners or the licensee(s) licensed to possess and operate those nuclear power plants were to default on, or become financially incapable of bearing, their share

of the costs of operating in accordance with NRC requirements. Specifically, the petitioners are concerned that the NRC's "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry" (Policy Statement) published on August 19, 1997 (62 Fed. Reg. 44071), has resulted in confusion among joint owners of nuclear power plants regarding the potential liability of the owner of a relatively small ownership share of a nuclear power plant. The petitioners believe that a joint owner could incur the burden of all or an excessive portion of a plant's costs if other joint owners or the operators defaulted or became financially incapable of bearing their share of the burden. The petitioners believe that the NRC might ignore existing pro rata cost sharing arrangements. The petitioners also believe that the NRC has published no information regarding what would constitute a de minimis share and under what circumstances the NRC might find the imposition of joint and several liability necessary to protect the public health and safety.

The petitioners have concluded that these factors have caused much confusion and uncertainty about the potential liability of a joint owner, and can adversely affect the ability to raise capital in an uncertain market that is undergoing consolidation and restructuring. The petitioners believe that the Policy Statement might stifle the emerging market for the sale of nuclear power plants and associated interests, and have concluded that the unsettled nature of potential liability would adversely affect joint owners who wish to be acquired by other utilities because decommissioning costs are unknown. The petitioners request that the issue of potential liability among joint owners be resolved by amending the regulations pertaining to enforcement in 10 CFR Part 50.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM-50-64. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioners note that the NRC Policy Statement issued on August 13, 1997 and published in the Federal Register on August 19, 1997 (62 Fed. Reg. 44071), "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry" (Policy Statement) contemplated how NRC would respond to potential safety impacts on power reactor licensees that could result from economic deregulation and restructuring of the electric utility industry. Although the NRC recognized that many licensed nuclear power plants are jointly owned facilities, the petitioners are concerned that the NRC stated that pro rata cost sharing arrangements might be ignored in "highly unusual situations where adequate protection of public health and safety would be compromised if such action were not taken, to consider imposing joint and several liability on co-owners of more than a de minimis share when one or more co-owners have defaulted." The petitioners are also concerned that the NRC has published no information regarding what would constitute a de minimis share and the situation where the NRC might find the imposition of joint and several liability necessary to protect the public health and safety. The petitioners believe that the quoted portion of the Policy Statement appears to create a possibility that the owner of a small share of a nuclear power plant could be held responsible for all or an excessive portion of a plant's costs if other co-owners or the operators became financially incapable of meeting their pro rata

obligations.

The petitioners contend that these factors create much uncertainty as to the potential liability of a joint owner and could adversely affect a joint owner's ability to raise capital in an industry undergoing consolidation and restructuring. The petitioners believe there is an emerging market for the sale of nuclear power plants and interest in those plants that could be stifled. The petitioners also believe that the unsettled potential liability issue could prevent co-owning utilities from being acquired by other utilities because actual or projected costs, such as decommissioning costs, are unknown.

The petitioners stated that a group of joint owners requested NRC review of the Policy Statement and ultimately petitioned for judicial review in the U.S. Court of Appeals for the D.C. Circuit, American Public Power Association, et al. v. Nuclear Regulatory Commission, et al. (Case No. 98-1219). Although the case was dismissed after an agreement between the parties, the NRC stipulated that future legal challenges on the potential liability issue of joint owners would not be precluded by the dismissal.

The petitioners have proposed the following language they believe will eliminate confusion and establish a stable regulatory process on the potential liability issue, and request that it be included among the enforcement provisions in 10 CFR Part 50:

> Whenever the Commission finds it necessary or desirable to impose additional requirements by rule, order or amendment on a person subject to this part to promote or protect the public health and safety, the additional requirements will be directed first to the person licensed to possess and operate the facility. If it becomes necessary to impose additional requirements on persons who only own the facility, and were never licensed to operate, then the Commission will not impose greater than the agreed allocation of responsibility among all the owners and

operators reflected in applicable joint ownership or similar agreements pertaining to the plant.

Although the petitioners agree that all licensees must comply with their licenses, they believe the prospect of joint and several liability is directly contrary to joint ownership agreements in which ownership commitments were made and substantial sums of capital were raised based on a contractual pro rata allocation of liability for plant costs. The petitioners also contend that accounting of assets and liabilities for potential sales of ownership interests is made more uncertain because of the unsettled potential joint liability issue.

In addition to the petition for rulemaking, the petitioners have attached a document entitled, "Memorandum of Law in Support of Petition for Rulemaking." The petitioners state that the Atomic Energy Act of 1954, as amended (AEA), does not authorize the NRC to impose any liability (per se) and only allows the NRC to impose certain substantive safety obligations on licensees. The petitioners state that the Price Anderson Act (AEA §170), contains an elaborate statutory framework for public liability and associated actions, and provides for various fees and NRC involvement in deferred premiums. However, the petitioners contend that the NRC has no public safety authority to impose liability or initiate or adjudicate claims of liability on behalf of the public.

Under the Price Anderson Act, the petitioners note that legal actions are brought by injured persons, rules for decision in public liability cases are derived from State law, and that the U.S. district courts have jurisdiction to adjudicate claims. The petitioners note that although the AEA and congressional appropriations acts permit the NRC to

impose and collect fees, they believe the power to create fee liability does not extend to other types of liability. The petitioners believe that although the NRC has authority to impose financial qualifications requirements and has used this authority to require funds to be provided for decommissioning, no comparable funding requirement for operation exists. The petitioners also note that although the Environmental Protection Agency, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), has authority to initiate safety improvements at taxpayers' expense and then sue the licensee for reimbursement, nothing in the AEA allows the NRC to decommission a plant and impose liability for reimbursement. The petitioners state that the NRC policy on joint and several liability could be understood to "...hold co-licensees jointly and severally responsible for meeting specific substantive safety obligations under the AEA. However, even as so understood, the Commission's statement is directly contrary to the contractual basis on which joint ownership arrangements for nuclear power plants have been structured. In most, if not all, such arrangements, ownership commitments were made and substantial sums of capital raised based on a contractual pro rata allocation of responsibility for plant costs." (Emphasis in original). The petitioners state that because the NRC has implicitly accepted these arrangements, all interested parties would have their reasonable expectations overturned by the imposition of joint and several liability.

The petitioners assert that NRC has approved many agreements among co-owners based on a contractual pro rata allocation of responsibility for plant costs. The petitioners assert that a draconian imposition of liability is not necessary because even nuclear power plant licensees in bankruptcy have always been able to comply with NRC

safety requirements. The petitioners note that the situation at Three Mile Island Unit 2 after the accident was adequately addressed by the accident cleanup insurance requirements in 10 CFR § 50.54(w). The petitioners believe that the NRC has never faced a situation where a nuclear power reactor licensee was financially unable to meet its safety obligations and that even with the operating licensee in bankruptcy, the NRC's safety authority is preserved. The petitioners cite Midlantic National Bank v. New Jersey Department of Environmental Protection, 474 U.S. 494, 506-507 (1986); Ohio v. Kovacs, 469 U.S. 274 (1985); and Penn Terra, Ltd. v. Department of Environmental Resources, 733 F. 2d 267 (3rd Cir. 1984), as cases which found that a bankruptcy court does not have the power to authorize an abandonment without compliance with environmental laws and protection of the public's health and safety.

The petitioners also believe the Policy Statement is inconsistent with the final rule published on September 22, 1998 (63 FR 50465), and associated proposed rule that was published on September 10, 1997 (62 FR 47588), "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors," in which the NRC noted difficulties that could stem from attempting to impose joint liability on co-owners and co-licensees for decommissioning costs. These difficulties included problems regarding potential disagreements on decommissioning methods, the inhibition of flexibility, the weakening of competitive position, and implementation that the petitioners believe exist regarding potential joint owner liability. The petitioners reiterate that under the AEA, it would be unreasonable and unlawful for the NRC to impose "an onerous safety obligation on non-operating co-owners simply because the person with the real safety obligation--the operator--is facing financial difficulty" especially when the NRC has the

authority to impose financial qualifications requirements on those who propose to operate a reactor.

The petitioners also contend that the Policy Statement raises questions of impermissible retroactivity to nuclear power plant owners. The petitioners note that in Landgraf v. USI Film Products, 511 U.S. 244, 265-266 (1994), the Supreme Court has held that:

> [E]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted * * *. In a free, dynamic, society, creativity in both commercial and artistic endeavors is fostered by a rule of Law that gives people confidence about the legal consequences of their actions.

In General Motors Corp. v. Romein, 503 U.S. 181, 191 (1992), the petitioners note that the Supreme Court ruled that: "Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions." In Bowen v. Georgetown Univ. Hospital, 488 U.S. 204, 208 (1988), the petitioners also noted that the Supreme Court found that "congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result."

The petitioners believe that these cited decisions illustrate that an NRC order imposing onerous safety requirements on a co-owner licensee disregard pro rata sharing agreements, defeat legitimate expectations, and upset settled transactions. The petitioners assert that joint owners have relied upon pro rata arrangements for decades with implicit NRC approval and that the industry restructuring and emerging market for nuclear power plants require that these sharing agreements continue. The

petitioners believe that under Bowen, the NRC cannot issue retroactive rules unless that authority is granted explicitly by statute. The petitioners believe that the NRC does not possess this authority because nothing in the AEA specifically gives the NRC the power to issue retroactive rules.

The petitioners distinguish backfit rules from those that are retroactive. The petitioners acknowledge that the vast majority of NRC backfits apply to plant operation after the effective date of the backfit and could never have been applied without the beginning of plant operation. However, the petitioners state that the imposition of new requirements on non-operating co-owners without regard for pro rata cost sharing agreements is distinguishable from a backfit because entities licensed to own or operate have no reasonable expectation that the NRC will never impose additional safety requirements as a condition of continued operation. The petitioners maintain that for non-operating co-owners there is reasonable expectation that the NRC would continue to honor pro rata cost-sharing contractual agreements even though NRC has power to impose additional safety measures.

The petitioners acknowledge that any determination that an NRC rule or order is impermissibly retroactive will be made by the courts. However, the petitioners have concluded that an NRC imposition of a new operational safety requirement on a non-operating co-owner group that holds all co-owners equally responsible and disregards pro rata cost-sharing agreements would be unreasonable and unlawful.

Lastly, the petitioners acknowledge that the NRC has the authority to prevent an unsafe plant from operating. They also agree that a plant that cannot operate is a liability, not an asset. The petitioners cite Public Service Company of New Hampshire

(Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573 (1988), and state that it is in the interest of all licensees, co-owners, and operators to agree on the funding of necessary safety measures so the plant can operate. However, the petitioners believe that the Policy Statement interferes with licensees' rights to make their own decisions regarding allocation of safety expenses. The petitioners have concluded that NRC interference in allocation decisions among co-owners is not necessary for safety and creates potentially great difficulties for co-owning utilities who wish to consolidate, restructure, or sell assets.

The Petitioners' Conclusions

The petitioners have concluded that the NRC Policy Statement regarding electric utility deregulation and restructuring has caused great confusion among non-operating co-owners about the issue of potential joint liability if an operating licensee becomes financially incapable of meeting license conditions. The petitioners have concluded that the NRC might ignore existing pro rata contractual agreements among joint licensees and that no information has been published regarding what would constitute a de minimis share or under what circumstances the NRC might find the imposition of joint liability necessary to protect the public health and safety. The petitioners have also concluded that the unsettled potential liability issue could mean that a co-owner of a very small ownership share could become financially incapable of fulfilling its contractual obligations. Lastly, the petitioners have concluded that these factors might stifle an emerging market for the sale of nuclear power plants and associated interests because future operating and decommissioning costs are unknown.

The petitioners request that the issue of potential liability among joint owners be resolved as requested in their petition by amending the regulations pertaining to enforcement in 10 CFR Part 50.

Dated at Rockville, Maryland, this 29th day of December, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.