

From: [Irvin, Ian](#)
To: [Klukan, Brett](#)
Cc: [Elliott, Robin](#)
Subject: RE: Short Discussion re Jefferson Radiology and Hartford Hospital
Date: Thursday, February 11, 2021 9:52:22 AM

Brett (and Robin),

Thank you for the additional information and thank you for meeting for the quick discussion yesterday to answer a few of my questions. Thank you to Robin as well.

In trying to keep the bottom line up front – I going to say we have an indirect transfer of control here.

Admittedly, this was one I keep vacillating over. By way of a quick review (so to jog our memories if solely coming back to this email), the ownership of the minority company, Jefferson Radiology, has changed; therefore, an initial reaction was that there was no change of control because the minority company does not have a controlling interest. However, looking at the Operating Agreement, I pause. With equal representation and the voting structure in 5.01(b), it looks like the minority company has, at least, veto power or “negative control.” So the question before us– Is it a change of control when the minority company’s ownership changes and the minority company has veto power / negative control over the licensee?

There is not much on veto power or negative control from my research this morning. The issue that has been most informative though has been Toshiba’s 10% ownership, through a subsidiary, in the South Texas Project about 10 years ago. While most matters required a mere majority vote, which NRG would have because of its 90% ownership stake, there were several matters that required unanimity; thus giving Toshiba veto powers in those matters. So the fundamental issue there was whether Toshiba’s veto power was an issue vis-à-vis the Foreign ownership, control, or domination (FOCD) statutes and regulations. I’ll mention that the FOCD is not the concern for us in material space – the issue more germane to us is whether Toshiba’s veto power as a minority owner tripped FOCD. In other words, I’m not such much concerned with the “foreign” aspect of FOCD, I’m more focused on the “ownership, control, domination” part, which would be similar in reactor and materials space.

It looks like the NRC staff determined that Toshiba’s veto power over a limited set of things would trip FOCD. Extrapolating out to us, if Toshiba’s veto power tripped the OCD portion of FOCD, then it would also trip the OCD-like aspects for us, which would mean we have a change of control here.

I’ll make mention of an ASLBP case a year after the staff’s determination. ASLBP’s ruling was that the issues requiring unanimity were not within the NRC’s jurisdictional silo, so there was no trip of FOCD of the licensed materials and activities. However, I do not know what happened in that intervening year – Toshiba and NRG could have narrowed the issues requiring unanimity down to pass muster with the NRC. Likewise, I worry this may be a red herring – Toshiba’s veto power was limited whereas, for us, the veto power is quite broad in that it does encompass AEA regulated materials and activities.

All-in-all, that’s a long winded way for me to say – we have a transfer of control here. But a

slight difference in the Operating Agreement could reach a different conclusion.

As always – I'm here if you have any questions.

Regards,

Ian Irvin
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From: Klukan, Brett <Brett.Klukan@nrc.gov>
Sent: Wednesday, February 10, 2021 5:33 PM
To: Irvin, Ian <ian.irvin@nrc.gov>
Subject: RE: Short Discussion re Jefferson Radiology and Hartford Hospital

Ian,

Here are the ML numbers for the licensee transfer application: a 313 submitted 10/13/2020 (ML20338A180) and supporting documentation submitted 11/17/2020 (ML20338A184).

Thanks again for your help with this.

Cheers,
Brett

-----Original Appointment-----

From: Klukan, Brett
Sent: Wednesday, February 10, 2021 10:22 AM
To: Klukan, Brett; Elliott, Robin; Irvin, Ian
Subject: Short Discussion re Jefferson Radiology and Hartford Hospital
When: Wednesday, February 10, 2021 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Let me know if 2pm won't work for a quick chat re this transfer case.

Thanks.

Cheers,
Brett

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