

August 12, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-159

TITLE: RESPONSE TO STAFF REQUIREMENTS MEMORANDUM (SRM) SECY-97-304, FEBRUARY 5, 1998, "RESPONSE TO SRM: SECY-97-144, 'POTENTIAL POLICY ISSUES RAISED BY NON-OWNER OPERATORS'"

The Commission (with Commissioners Diaz, McGaffigan, and Merrifield agreeing, and Chairman Dicus disagreeing) disapproved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 12, 1999.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the SRM of August 12, 1999.

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR
DCS

VOTING SUMMARY - SECY-99-159

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
COMR. DICUS	X				X	7/15/99
COMR. DIAZ		X			X	8/3/99
COMR. McGAFFIGAN		X			X	7/30/99
COMR. MERRIFIELD		X			X	7/12/99

COMMENT RESOLUTION

In their vote sheets, Commissioners Diaz, McGaffigan, and Merrifield disapproved the staff's recommendation and provided some additional comments. Chairman Dicus approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on August 12, 1999.

Commissioner Comments on SECY-99-159

CHAIRMAN DICUS

I approve the paper subject to the following comments.

Prior to publication of the draft Regulatory Guide, the paper should clarify that there are two types of criteria, those that will automatically trigger a license amendment (those that affect licensed activities) and those that can be considered collectively before a license amendment is required.

COMMISSIONER DIAZ

I appreciate the staff's continuing refinement of criteria for triggering a full NRC review of non-owner operator arrangements under 50.80 (Transfer of Licenses). Nonetheless, I disapprove issuance of the draft regulatory guide for public comment because, as other Commissioners have noted, additional and, in some cases, fundamental clarifications are needed. For instance, the draft guidance does not clearly articulate or illustrate the principle, stated in the SECY paper, that consent is required if final decision-making authority is transferred in an area that is expressly or specifically a licensed activity. The guidance should identify and segregate with greater clarity the most important examples of a licensed activity that would individually trigger the need for full NRC review and consent. The staff should also address whether it can provide any appropriate bounding of the broad statements of pertinent types of licensed activity. I also agree that similar attention should be given to amplification of the areas of activity that will be examined collectively in determining the need for full NRC review and consent. The extra effort to provide specificity and transparency should produce long-term benefits for licensees and operating companies, as well as the NRC and the public generally.

COMMISSIONER MCGAFFIGAN

At a minimum, the draft SRP should make clear what decision-making activities automatically trigger review under 50.80. As the draft now stands, it will confuse many readers because at one point (page 3) it emphasizes that the NRC will do a collective review of all the listed areas, but then later it seems to say that most of the items on the list will, just by themselves, without any collective review, trigger 50.80 review.

But more, I share Commissioner Merrifield's discomfort with the lack of clarity in some of the examples, and with how few examples the draft provides of decision-making activities that, while they do not automatically trigger review under 50.80, will be part of the agency's collective review. The draft should contain more than 3 such examples.

All in all, I agree with Commissioner Merrifield that the draft needs significantly more work before it is issued for comment.

COMMISSIONER MERRIFIELD

The staff's effort to provide guidance regarding the threshold for NRC review of non-owner operating arrangements is commendable in light of the changing operating environment for nuclear power plant licensees. However, because the proposed Regulatory Guide presented in SECY 99-159 has some disappointing inconsistencies, I disapprove the staff's recommendation to publish the draft Regulatory Guide for public comment. My concerns are outlined below.

The Regulatory Guide is confusing in three respects. First, the Regulatory Guide does not expressly mention that a 50.80 review will be automatically triggered if the proposed operating agreement involves transfer of authority to decide a matter which requires a license. While this crucial point *is* noted on page 3 of the SECY paper itself, it is not carried forward into the Regulatory Guide. Having not made this point in the Regulatory Guide, however, the staff proceeds to list a long series of examples which fall into this category (i.e., examples of matters which require a license and whose transfer would thus trigger a 50.80 review.

Secondly, the Regulatory Guide expressly states that for the transfer of decision-making authority for matters which do not require a license, the staff will review the collective impact of the transfer of such individual decision-making authorities and determine if a defacto transfer of license authority has occurred. However, although there are hundreds of such decision-making activities involved in operation of a power plant, the Regulatory Guide contains examples of only three and, confusingly, intersperses them with the examples of specific licensed activities described above. Thus, it is extremely difficult for the user of the Regulatory Guide to either understand the basic philosophy of the staff's approach or gain insight into the specific points to consider when evaluating a potential operating agreement.

Thirdly, in the category of those activities which require a license, the Regulatory Guide lists some examples with a troubling lack of detail. Notably, the draft Regulatory Guide suggests that the entity which has decision-making authority over deferral of repairs would be considered to have authority over licensed activities and must be on the license. However, the Regulatory Guide does not in any way explore the limits of such a very broad concept. For instance, can a distinction be made between repairs to safety and non-safety equipment? What constitutes a deferral? While it is not possible to analyze all possible decision-making agreements in this area ahead of time, it is important that the Regulatory Guide make clear that the staff has considered some bounds to these and similar categories.

It is important that the staff complete the work it has started in this aspect of the dynamic arena of electric utility restructuring and deregulation. The staff should prepare a draft Reg Guide that presents guidance in a clear, organized fashion, the basic principles underlying 10 CFR 50.80. If the staff uses examples such as those presented in SECY 99-159, the examples should be representative and illustrative of the basic principles, should be well articulated, and should contain appropriate caveats for their use.