

JUNE 13, 1996

FOR: The Commissioners
 FROM: James M. Taylor /s/
 Executive Director for Operations
 SUBJECT: ADMINISTRATIVE LETTER ON LICENSEE RESPONSIBILITIES RELATED TO FINANCIAL QUALIFICATIONS AND ASSOCIATED FORWARDING LETTER

- [PURPOSE:](#)
- [DISCUSSION:](#)

PURPOSE:

To inform the Commission of the staff's intent to issue the enclosed administrative letter to all commercial power plant licensees and associated forwarding letter to Chief Executive Officers (CEOs) of these licensees.

DISCUSSION:

The enclosed administrative letter and associated forwarding letter to CEOs is one task in the NRC's Action Plan undertaken in response to electric utility industry deregulation and the recent restructuring efforts that may affect nuclear power plant licensees' availability of funds for safe reactor operation and decommissioning. Consistent with the staff's commitment to the Commission in a January 5, 1996 briefing on Industry Restructuring and Deregulation, the administrative letter reminds licensees of their current responsibility, under existing NRC regulations, to seek and obtain advance approval from the NRC for any changes that would constitute a transfer of their license, directly or indirectly, through transfer of control of the NRC license to any other person. Additionally, the administrative letter reminds licensees of their responsibility to assure that information regarding their financial qualifications and decommissioning funding assurance that may have a significant implication for public health and safety is promptly reported to the NRC. Lastly, the administrative letter stresses the importance of providing the NRC advance notice of such changes or information such that staff review resources can be allocated and NRC decisions are not unnecessarily delayed.

In addition to sending the administrative letter to all licensees, the staff intends to forward it to the licensee CEOs via the enclosed forwarding letter. Forwarding the administrative letter in this manner targets the most senior corporate individuals with respect to the types of utility restructuring changes and deregulation related activities that the NRC may need to be informed of.

The administrative letter and forwarding letter to CEOs do not transmit or imply any new or changed requirement or staff position; and therefore, no specific action or written response is required of licensees. The staff intends to issue the enclosed letters within 3 days from the date of this paper.

James M. Taylor
 Executive Director for Operations

Contact: David Matthews
 (301) 415-1282
 Robert Wood, NRR
 (301) 415-1255

Enclosures: [Administrative Letter](#)
[Forwarding Letter to CEOs](#)

[ATTACHMENT](#)

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

June XX, 1996

NRC ADMINISTRATIVE LETTER 96-XX:

LICENSEE RESPONSIBILITIES RELATED TO FINANCIAL QUALIFICATIONS

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Addressees

All holders of operating licenses or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this administrative letter to remind addressees 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 Section 50.80 of Title 10 of the Code of Federal Regulations (10 CFR 50.80), "Transfer of licenses." Additionally, this administrative letter reminds addressees of their responsibility to assure that information regarding a licensee's

financial qualifications and decommissioning funding assurance that may have a significant implication for public health and safety is promptly reported to the NRC. Lastly, this administrative letter points out the desirability of providing the NRC advance notice of any plans for such changes so that staff review resources can be allocated and NRC decisions are not unnecessarily delayed. This administrative letter does not transmit or imply any new or changed requirement or staff positions. The submittal of advance notice of your planning in this area is strictly voluntary; therefore, no specific action or written response is required.

Background

The electric utility industry is entering a period of economic deregulation and restructuring which will 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 companies or separate subsidiaries for electrical generation within larger holding companies. Disaggregation may involve utility restructuring, mergers, and corporate spinoffs that lead to changes in owners or operators of licensed power reactors and other material changes.

The NRC concern is that the remaining licensed entities have access to adequate funds, such that funds are available for safe reactor operation and decommissioning. The NRC has distinguished between an "electric utility" and other licensees in this regard. As defined in 10 CFR 50.2, an "electric utility" is an entity that generates or distributes electricity for which the costs are recovered by rates set by the entity or by a separate regulatory authority. Rate regulators allow an electric utility to recover prudently incurred costs of generating, transmitting, and distributing electric services. Corporate restructuring that changes the "electric utility" status of a power reactor licensee or otherwise alters the basis under which a licensee received an operating license for a power reactor should be brought to NRC attention in a timely fashion.

Discussion

This administrative letter reminds all power reactor licensees of their ongoing obligation to seek and obtain prior written consent from the NRC for any changes that would constitute transfer of the NRC license, directly or indirectly, through transfer of control of the license pursuant to 10 CFR 50.80 and Section 184 of the Atomic Energy Act as amended. In addition, licensees should assure that information regarding their financial qualifications and decommissioning funding assurance that may have a significant implication for public health and safety is promptly reported to the NRC.

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 so as 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. For sales of interests in power reactors, the NRC reviews are similar to those for mergers or formation of holding companies.

While some restructuring plans occur with little warning, many are anticipated well in advance of the desired implementation date. Licensees should consider providing advance notification of such plans to the NRC so that the staff can schedule the appropriate resources for review. Because the number of staff reviews in this area are expected to increase significantly in the future, licensees that wait until shortly before a decision is needed may find the staff unable to meet their desired schedule.

To address changes that may result from economic deregulation, the NRC issued, on April 8, 1996, an Advance Notice of Proposed Rulemaking (61 FR 15427) that seeks comment on deregulation issues as they may affect the NRC's decommissioning funding assurance requirements. The NRC has also developed an Action Plan that outlines additional steps the NRC intends to take to respond to economic deregulation of its power reactor licensees. Until these actions are complete, our current regulations are governing. However, you should be aware that the NRC staff will consult with the Commission when any new or unusual restructurings alter your original licensing basis.

This administrative letter requires no specific action or written response. If you have any questions about this letter, please contact one of the persons listed below or the appropriate Office of Nuclear Reactor Regulation (NRR) project manager.

Brian K. Grimes, Acting Director
Division of Reactor Program Management
Office of Nuclear Reactor Regulation

Contacts: Robert Wood, NRR
(301) 415-1255
Internet: rsw@nrc.gov

Bill Lambe, NRR
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Internet: wml@nrc.gov

Attachment: List of Recently Issued NRC Administrative Letters

[ATTACHMENT](#)

Mr. O. Mark DeMichele
President and Chief Executive Officer
Arizona Public Service Company
P.O. Box 52034
Phoenix, Arizona 80572-2034

Dear Mr. DeMichele:

The Nuclear Regulatory Commission (NRC) has recently seen an increase in corporate changes such as mergers, acquisitions, sales of interests in nuclear facilities, and sales of other corporate assets for the purpose of securing a more competitive position in the new utility environment. The Commission is concerned that such changes may affect the basis for prior NRC decisions related to financial qualifications as an NRC licensee or may result in a transfer of control of license.

The enclosed administrative letter summarizes your ongoing responsibility under NRC regulations to seek and obtain prior NRC consent for any changes that would constitute a transfer of the NRC license, directly or indirectly, through

transfer of control of the license to any person. In addition, we are concerned that information is promptly reported to the NRC that might materially affect the basis for prior NRC decisions on financial qualifications or decommissioning funding assurance, including, for example, the determination regarding a licensee's status as an electric utility.

Please ensure that this administrative letter and the associated NRC concern expressed herein receive your attention and the attention of your corporate management. If your staff has questions concerning this matter they may call Bob Wood of my staff at (301) 415-1255.

Sincerely,

William T. Russell, Director
Office of Nuclear Reactor Regulation

Enclosure: Administrative Letter