

April 16, 1998

FOR: The Commissioners

FROM: L. Joseph Callan /s/  
Executive Director for Operations

SUBJECT: PLAN FOR THE TIMELY CONFIRMATION OF POWER REACTOR LICENSEES AS "ELECTRIC UTILITIES" AS ECONOMIC DEREGULATION PROCEEDS

## PURPOSE:

To provide the Commission with the staff's plan for confirming that the NRC's power reactor licensees continue to meet the NRC's definition of "electric utility." Alternatively, this plan also addresses the means by which licensees that no longer meet this definition are complying with the additional financial assurance and decommissioning funding assurance specified in the NRC's regulations.

## BACKGROUND:

On October 24, 1997, the staff sent to the Commission SECY-97-253, "Policy Options for Nuclear Power Reactor Financial Qualifications in Response to Restructuring of the Electric Utility Industry." In the January 15, 1998, staff requirements memorandum issued in response to that paper, the Commission directed the staff to develop a plan for the timely confirmation of power reactor licensees as "electric utilities."

## DISCUSSION:

The staff is currently using several sources to obtain information about State economic deregulation initiatives:

1. The trade press (e.g., *Energy Daily*, *Nucleonics Week*, *The Wall Street Journal*);
1. The monthly report prepared by the Office of the General Counsel on the "Status of Electric Industry Restructuring Activities in the States;"
2. Bi-weekly conference calls with the Staff Subcommittee on Nuclear Issues--Waste Disposal of the National Association of Regulatory Utility Commissioners (NARUC) and other NARUC liaison activities;
3. Direct contact with State representatives (e.g., Massachusetts) to obtain State deregulation legislation; and
4. Applications for 10 CFR 50.80 license transfers by power reactor licensees.

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The staff believes that these sources provide a comprehensive, timely means of obtaining necessary information regarding State restructuring actions which may affect a licensee's status as an "electric utility." By their very nature, State restructuring legislation or public utility commission (PUC) initiatives are significant actions that typically achieve wide publicity and extensive public attention. In addition, because of the complexity and the substantial impact of electric utility deregulation (and uncertainties surrounding this impact) on State citizens and businesses, virtually all State programs are likely to be phased in over time. This process should afford the NRC sufficient time to act if it appears that specific State initiatives may potentially cause individual licensees to lose "electric utility" status, or be inimical to protection of public health and safety.

In addition to obtaining information on State restructuring actions, the staff has also recently instituted a contract with the Oak Ridge National Laboratory (ORNL) to evaluate specific State deregulation legislation and PUC actions to determine their likely impact on the recovery of nuclear plant operating and decommissioning costs. The work with ORNL is intended to provide an independent assessment of the impact of these State activities so that the staff can take appropriate, timely action when necessary.

The staff also believes that Administrative Letter 96-02, "Licensee Responsibilities Related to Financial Qualifications," issued on June 21, 1996, has served to alert licensees of their obligation to report to the NRC regarding license transfer actions that have primarily arisen from economic deregulation of the electric power industry. Informal feedback from licensees and their representatives indicates that several 10 CFR 50.80 license transfer applications have been submitted in response to the Administrative Letter. In two instances in which the licensee had not submitted a 10 CFR 50.80 application, the staff had learned about the restructuring actions through the information sources cited above and contacted the licensee for appropriate information. In each of these two cases, the staff determined after a threshold review that a full 10 CFR 50.80 review was not warranted.

In sum, the staff believes that the review plan and the process described above provide a high degree of confidence that the NRC will be able to identify, in a comprehensive and timely manner, any power reactor licensees that no longer meet the NRC's definition of "electric utility" as a result of State deregulation actions. Given this information, the NRC will be able to act to ensure that its power reactor licensees remain financially qualified to operate and decommission their plants safely through requiring submittal of additional information and, where appropriate, enforcement of the NRC's decommissioning funding assurance requirements.

RESOURCES:

There are no additional resource implications for the plan and the process described above. The staff has already implemented this plan and has used and will use existing resources to accomplish it.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has not reviewed this Commission paper because there are no additional resource implications.

RECOMMENDATION:

That the Commission approve the plan and the process as described.

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