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DRAFT REGULATORY GUIDE

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(Proposed Revision 1 to Regulatory Guide 9.3)

**INFORMATION NEEDED FOR AN ANTITRUST REVIEW
OF INITIAL OPERATING LICENSE APPLICATIONS
FOR NUCLEAR POWER PLANTS**

A. INTRODUCTION

As required by the Atomic Energy Act of 1954, the Nuclear Regulatory Commission conducts antitrust reviews with respect to the construction permits and initial operating licenses it issues for commercial nuclear power plants. Pursuant to 10 CFR 50.80, "Transfer of Licenses," of 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," all applicants are to submit the information required by 10 CFR 50.33a, "Information Requested by the Attorney General for Antitrust Review." Under certain circumstances, the Commission must make a finding as to whether the activities under the permit or license would create or maintain a situation inconsistent with the antitrust laws. An antitrust review at the initial operating license stage is not required unless the NRC determines that such a review is advisable on the grounds that significant changes in the licensee's activities or proposed activities have occurred after the antitrust review conducted by the Attorney General and the Commission at the construction permit stage.

This regulatory guide identifies the type of information that the staff considers germane for a decision as to whether a second antitrust review is required at the initial operating license stage.

The information collections contained in this draft regulatory guide are covered by the requirements of 10 CFR Part 50, which were approved by the Office of Management and Budget, approval number 3150-0011. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

This regulatory guide is being issued in draft form to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff approval and does not represent an official NRC staff position.

Public comments are being solicited on the draft guide (including any implementation schedule) and its associated regulatory analysis or value/impact statement. Comments should be accompanied by appropriate supporting data. Written comments may be submitted to the Rules and Directives Branch, ADM, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments may be submitted electronically to the interactive web site through NRC's home page <<http://www.nrc.gov>>. Copies of comments received may be examined at the same web site or at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by

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B. DISCUSSION

On June 18, 1999, the Commission issued a Memorandum and Order in the Wolf Creek license transfer proceeding dismissing a petition to intervene on antitrust grounds. *Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1)*, CLI-99-19, 49 NRC 441 (1999) (Wolf Creek). In *Wolf Creek*, the Commission “concluded that the Atomic Energy Act does not require or even authorize antitrust reviews of post-operating license transfer applications, and that such reviews are inadvisable from a policy perspective.” The Commission further stated that the NRC staff would be directed to initiate a rulemaking “to clarify the Commission’s regulations to remove any ambiguities and ensure that the rules clearly reflect the views set out in this decision.” The Commission directed the initiation of such a rulemaking and the clarification of Regulatory Guide 9.3 and NUREG-1574, “Standard Review Plan on Antitrust Reviews.” This regulatory guide is being revised to clarify that the guide applies only to initial operating license applications.

C. REGULATORY POSITION

1. An applicant for an initial license to operate a commercial nuclear power plant should provide the following items, along with a statement of any related changes that have occurred or are planned since submission of the construction permit application.

1.1 State the anticipated excess or shortage in generating capacity resources that were not expected at the construction permit stage. The reasons for the excess or shortage should be provided, along with data on how the excess will be allocated, distributed, or otherwise utilized or how the shortage will be mitigated.

1.2 Specify new power pools or coordinating groups, as well as changes in structures, activities, policies, practices, or membership of power pools or coordinating groups in which the applicant was or will be a participant.

1.3 Specify changes in transmission with respect to (1) the nuclear plant, (2) interconnections, or (3) connections to wholesale customers.

1.4 Specify changes in the ownership or contractual allocation of the output of the nuclear facility. The reasons and bases for such changes should be included.

1.5 Specify the changes in design, provisions, or conditions of rate schedules and the reasons for such changes.

1.6 Provide lists of all (1) new wholesale customers, (2) transfers from one rate schedule to another, including copies of schedules not previously furnished, (3) changes in licensee’s service area, and (4) licensee’s acquisitions or mergers.

1.7 Provide a list of future additions to generating capacity.

1.8 Summarize any requests or indications of interest by other electric power wholesale or retail distributors, along with the licensee’s response, for any type of electric service or cooperative venture or study.

2. Licensees whose construction permits include conditions that pertain to antitrust aspects should list and discuss those actions or policies that have been implemented in accordance with such conditions.

3. Licensees should submit five copies of a separate document, titled "Information for Antitrust Review of Operating License Application." This document should contain the information requested above and should be submitted when the operating license application documents are submitted or as soon as possible thereafter.

D. IMPLEMENTATION

The purpose of this section is to provide information to applicants regarding the NRC staff's plans for using this regulatory guide.

This proposed revision has been released to encourage public participation in its development. Except in those cases in which an applicant proposes an acceptable alternative method for complying with the specified portions of the NRC's regulations, the methods to be described in the active guide reflecting public comments will be used in the NRC staff's antitrust review of initial operating license applications for nuclear power plants.

REGULATORY ANALYSIS

1. PROPOSED ACTION

On June 18, 1999, the Commission issued a Memorandum and Order in the Wolf Creek license transfer proceeding dismissing a petition to intervene on antitrust grounds. In *Wolf Creek*, the Commission “concluded that the Atomic Energy Act does not require or even authorize antitrust reviews of post-operating license transfer applications, and that such reviews are inadvisable from a policy perspective.” The Commission further stated that the NRC staff would be directed to initiate a rulemaking “to clarify the Commission’s regulations to remove any ambiguities and ensure that the rules clearly reflect the views set out in this decision.” The Commission directed the initiation of such a rulemaking and the clarification of Regulatory Guide 9.3 and NUREG-1574, “Standard Review Plan on Antitrust Reviews.” This regulatory guide is being revised to clarify that the guide applies only to initial operating license applications.

Regulatory Guide 9.3, “Information Needed by the AEC Regulatory Staff in Connection with Its Antitrust Review of Operating License Applications for Nuclear Power Plants,” was issued by the Atomic Energy Commission in October 1974. This guidance is still valid for the most part, but it might be construed to apply to all operating license applications.

The proposed action is to revise Regulatory Guide 9.3 to clarify that its guidance applies only to initial operating license applications and to update the guide to current NRC format and style.

2. VALUE/IMPACT

2.1 Value

The value of updating Regulatory Guide 9.3 is from the clarification that antitrust reviews are not needed for any operating license applications except for initial operating license applications. This saves the applicants for post-operating-license transfer applications costs of researching and preparing the antitrust review, and it saves the NRC staff the costs of reviewing the applicants’ submittals. A revised Regulatory Guide 9.3 would thereby clarify and simplify the licensing process for applicants who are involved in a change of ownership of a nuclear facility.

2.2 Impact

The only costs of revising Regulatory Guide 9.3 are the NRC staff time of updating a short (two pages) regulatory guide and the costs of printing and publishing the guide for public comment and then in final form.

3. TECHNICAL APPROACH

The guide does not set forth any technical positions, this section is not applicable.

4. PROCEDURAL APPROACH

The only appropriate procedure is to revise the existing regulatory guide. All other methods, such as regulations, policy statements, NUREG reports, and branch technical positions, would be inappropriate.

5. STATUTORY CONSIDERATIONS

Authority for the proposed action is derived from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended and implemented through the Commission's regulations at 10 CFR 50.80, "Transfer of Licenses."

6. RELATIONSHIP TO OTHER EXISTING OR PROPOSED REGULATIONS OR POLICIES

The regulatory guide would be issued as a draft for public comment in support of the regulations at 10 CFR 50.80 and a proposed amendment to Appendix L to 10 CFR Part 50.

7. SUMMARY AND CONCLUSIONS

Revising Regulatory Guide 9.3 to clarify that it applies only to initial operating license applications would simplify the licensing process necessitated by a change of ownership. The revision would be consistent with the clarification to the Commission's regulations to remove any ambiguities and ensure that the guidance reflects the Commission's views on antitrust reviews of post-operating-license transfer applications.

Regulatory Guide 9.3 should be issued as a draft for public comment and then as a final regulatory guide that incorporates public comments.