

September 20, 1999

FOR: The Commissioners

FROM: William D. Travers /s/
Executive Director for Operations

SUBJECT: MONITORING OF FOREIGN OWNERSHIP OF REACTOR LICENSEES -- RESPONSE TO STAFF REQUIREMENTS MEMORANDUM (FEBRUARY 17, 1999) REGARDING SECY-98-246

PURPOSE:

To recommend to the Commission ways in which the staff can monitor transactions that may involve significant changes in foreign ownership or control of reactor licensees.

BACKGROUND:

On October 23, 1998, the Commission was provided with a draft "Standard Review Plan Regarding Foreign Ownership, Control, or Domination of Applicants for Reactor Licenses" (SRP) in [SECY-98-246](#). The SRP addresses the statutory and regulatory prohibition against applicants for reactor licenses being owned, controlled, or dominated by foreign interests. In a Staff Requirements Memorandum (SRM) dated February 17, 1999, the Commission approved the SRP for interim use subject to certain modifications. Separately in the SRM, the Commission directed the staff to study and make recommendations on ways in which the staff can monitor transactions that may involve significant changes in the nature or extent of foreign ownership (presumably of existing reactor licensees, in light of former Chairman Jackson's comment). The staff was advised to consider resources that would be associated with alternatives.

DISCUSSION:

The SRP addresses the process the staff will follow in reviewing applications for a license, or applications for approval of the transfer of a license, to determine whether the applicant is owned, controlled, or dominated by a foreign interest. Once a license is granted, there is presently no specific procedure under which the staff monitors existing licensees to determine whether they may have become owned, controlled, or dominated by foreign interests since the issuance of the license. (The staff also notes that it currently has no standardized procedures (e.g., a SRP) that specifically address, apart from the foreign control issue, the making of a finding that issuance of a license or license amendment would not be inimical to the common defense and security. Thus, this paper does not directly address procedures with respect to such inimicality findings.)

In general, there are numerous ways by which persons may be able to acquire control of a corporation, the typical business form of reactor licensees. For example, one can purchase shares of stock of the corporation in sufficient quantities to control the election of the corporation's board of directors, enter into agreements to act in concert with other shareholders for the purpose of control, or become a key officer or director of the corporation coupled with stock ownership or agreements with other shareholders or officers or directors to act in concert.

As a practical matter, it would be impossible for the staff to monitor daily stock transactions, or the existence of express or tacit agreements between shareholders and/or officers and directors, and conclusively determine whether a foreign entity may have acquired control of a licensee. To adequately monitor licensees for foreign ownership or control, the staff would need to rely on a large database with very comprehensive information on U.S. corporations or on "leads," whether from licensees, the public, or the trade press, upon which the staff could have a reasonable basis to conduct a further review, using the SRP as guidance for gathering additional information and analyzing it.

An example of a large, relatively comprehensive database that measures certain percentage ownership of some U.S. corporations is the EDGAR system, maintained by the Securities and Exchange Commission (SEC). But input to the EDGAR system is limited by the categories of entities that must register with the SEC. For example, even though many large, publicly traded licensees have registered stock under the Securities Exchange Act of 1934 (1934 Act) and, therefore, certain shareholders (not the corporation) are subject to filing schedules disclosing the extent of their beneficial ownership, such filings are simply a starting point to examine foreign ownership issues further, and in no way conclusively indicate "control" simply by virtue of the 1934 Act's "more than 5%" threshold for filings to be made. Furthermore, not all licensees necessarily have stock issued that is subject to the 1934 Act. Also, the Public Utilities Holding Company Act of 1935 (PUHCA) requires that foreign entities seeking to become a holding company or to own a U.S. holding company either must register with the SEC or apply for an exemption. Those seeking only to own a plant or other facility do not necessarily have to register with the SEC. Regulated U.S. electric utilities are required to register with the SEC, but those that become deregulated will no longer be required to register.

Another limitation of EDGAR, as with many other large database systems, is the significant amount of time and staff resources required to monitor numerous corporations on a routine basis.

Rather than relying on large database systems, the staff proposes a simpler but effective alternative relying on information from the trade press, public information, and licensees. The staff currently monitors the trade press regarding significant changes in ownership and control of reactor licensees. Also, the staff is developing a generic communication to remind reactor licensees of the prohibition against foreign ownership and control and to inform licensees to bring to the NRC's attention any information that may indicate that changes will occur, or have occurred, with respect to a licensee or parent company such that the licensee or one or more of its reactors may be or become owned, controlled, or dominated by foreign interests.

The staff believes that continuing to monitor changes disclosed by the trade press and other sources, combined with issuing the proposed generic

communication, will provide the most feasible means of monitoring while minimizing resource requirements for the NRC and licensees. The resources required to develop and to issue the proposed generic communication and to conduct the monitoring are within the scope of the current budget.

COORDINATION:

OGC has reviewed this paper and has no legal objection to its contents. The OCFO has reviewed this paper for resource implications and has no objections to its contents.

RECOMMENDATION:

That the Commission approve the staff proposal for monitoring foreign ownership and control, which will primarily involve ongoing monitoring of the trade press and developing a generic communication to inform licensees to notify the NRC about changes with respect to them or to their parent company such that the licensee or one or more of its reactors may be or become owned, controlled, or dominated by foreign interests.

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