

July 11, 2000

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-00-0126 - DENIAL OF
PETITION ON JOINT AND SEVERAL LIABILITY (PRM-50-64)

The Commission has approved the staff's recommendation for denial of the petition for rulemaking and publication of the Federal Register notice announcing the denial subject to incorporation of the attached changes.

(EDO)

(SECY Suspense:

8/18/00)

Attachment: Changes to the Federal Register notice in SECY-00-0126

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CIO
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

SECY NOTE: THIS PAPER AND SRM TO BE MADE PUBLICLY AVAILABLE 5
WORKING DAYS AFTER ISSUANCE OF THE LETTER.

Changes to the Federal Register notice in SECY-00-0126

1. On page 3, paragraph 1, delete the 'I' in the 'FIR' in the parentheses.
2. On page 4, 1st full paragraph, revise the last sentence to read '~~However, the~~ cooperative utilities **also agreed with other issues and in general** favored the petition. ; ~~while the~~ investor-owned utilities **disagreed with other issues and consequently** were against it **the petition**.'
3. On page 5, paragraph 1 (Response), revise the last line to read ' ... public health and safety, **e.g.**, where one of the other co-owners is no longer capable of paying its *pro rata* share of costs. The rule change contemplated by the petition could prohibit the Commission from remedying such a situation. It would suggest that no matter how much a co-owner's financial outlook changes for the worse from the time of initial licensing for the worse, the Commission may not take all necessary action to ensure safe operation or decommissioning. Such a scheme would be inconsistent with the Commission's longstanding authority to take regulatory action in situations involving changed circumstances from initial licensing. See Atomic Energy Act §§ 186, 187, 42 USC 2236, 2237; 10 C.F.R. § 50.100; Cf., All Chemical Isotope Enrichment, Inc., LBP-90-26, 32 NRC 30 (1990) (Licensing Board sustained staff revocation of construction permits of a licensee that had failed to disclose its true financial condition during the original licensing proceeding).'
4. On page 6, paragraph 2 (Response), revise line 4 to read ' ... commenter's ~~implicit argument,~~ **assumption** the Commission never'
5. On page 6, paragraph 2 (Response), revise lines 9 and 10 to read ' ... Commission ~~had~~ assured itself that the co-applicants'/co-licensees' ~~cost-sharing scheme, regardless of its character and provisions,~~ **financial qualifications** provided for reasonable assurance that'
6. On page 6, paragraph 2 (Response), revise the next to last line to read ' ... has reviewed the co-owners'/**co-licensees**' provisions for decommissioning'
7. On page 7, paragraph 1, replace the 2nd and 3rd sentences with the following: "Although power reactor licenses frequently recite the ownership percentages of the co-licensees, those percentages do not invariably reflect the allocation of decommissioning funding obligations. By reciting ownership percentages, the staff did not intend to make any finding about proportional allocation of decommissioning funding obligations."
8. On page 7, paragraph 1, in line 7, insert a new sentence as the next to last sentence as follows: "Therefore, the co-owners had no reasonable expectation that their regulatory obligations were limited by those arrangements."
9. On page 7, paragraph 2, line 6, insert a new sentence after 'proceeding' as follows: "The enforcement of those arrangements appropriately lies with the parties to those *pro rata* - share contracts and the courts, not the NRC, which is neither a party to the contracts nor a tribunal with authority to enforce them."

10. On page 8, 2nd full paragraph (Response), revise lines 5 and 6 to read ‘ ... circumstances in which ~~no other regulatory action would protect~~ the public health and safety ~~would be compromised if no action were taken by the Commission, and when the other courses of action have been exhausted~~ , such as’
11. On page 9, last paragraph, revise lines 9 and 10 to read ‘ ... ~~Particularly, co-owners that are~~ **For example, relatively small portions of nuclear units may be owned by** smaller rural electric cooperatives or **small** municipal electric systems. ~~Tend to own relatively small portions of nuclear units~~
12. On page 10, last paragraph, line 11, end the paragraph after ‘exhausted’ and start a new paragraph. In lines 11 through 13 (now at the beginning of the new paragraph), revise it to read ‘~~Further, the Commission notes that the petitioners have petitioned for a particular rule that makes no reference to de minimis ownership. In order to deny the petition, it is not necessary~~ **In any event,** the Commission **does not find it advisable** to establish what would’
13. On page 10, revise the last 2 lines to read ‘ ... *de minimis* threshold is ~~advisable or warranted~~ **appropriate; the Commission needs to retain flexibility to respond to particular circumstances.**’
14. On page 11, footnote 4, revise lines 1 and 2 to read ‘ ... inadequate funds to ~~safely~~ operate the facility **safely**, the appropriate’
15. On page 12, last paragraph, revise lines 6 and 7 to read ‘ ... circumstances, ~~the Commission has imposed~~ joint and several regulatory responsibility **has been imposed.**’
16. On page 12, last paragraph, place a period at the end of line 9 after ‘1989)’ and delete all of line 10 and ‘(1990)’ in line 11. Revise lines 11 and 12 to read ‘Although ~~the Commission has only sought to impose~~ joint and several regulatory responsibility **has only been imposed** in compelling’
17. On page 15, 2nd full paragraph (Response), revise lines 2 and 3 to read ‘ ... request fro public comment **on the issue of the allocation of responsibility of co-owners (61 FR 49711, 49713 (1996)). The Commission responded to the comments it received on joint and several liability in publishing the final policy statement. (62 FR 49071, 49074 (1997))** ~~All preambles in final policy statements include in a discussion of any public comments received.~~ **Moreover, because all co-owners are co-licensees under NRC legal precedent, See Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 198-201 (1978), the Commission does not believe that the policy statement represents a change in previous policy. In addition, as described’** Delete the next to last sentence in the paragraph (Because all co-owners are ... previous policy.)