

March 6, 2002

Frances E. Francis, Esq.
Gary J. Newell, Esq.
Spiegel & McDiarmid
Suite 1100
1350 New York Avenue, NW
Washington, D.C. 20005-4798

Dear Ms. Francis and Mr. Newell:

This letter provides the Commission's response to Publicly Owned Systems' Motion for Modification or, In the Alternative, Request for Rehearing of Order Denying Petition for Rulemaking ("Motion"), dated September 22, 2000. Please accept our apologies for the delay in this response. Regrettably, the staff did not identify until recently that we had failed to respond to your motion, or alternative request.

Your motion was filed in response to the Commission's denial of a petition for rulemaking filed by Atlantic City Electric Company, *et al.*, regarding the potential financial liability of minority owners of nuclear power plants should other joint owners become financially incapable of bearing their responsibilities for the safe operation or decommissioning of a nuclear power plant. 65 FR 46661 (July 31, 2000). Your motion requests that the Commission:

...confirm that affected parties have the right to challenge the Commission's legal authority to impose joint and several responsibility, *de novo*, at such time as the Commission may actually seek to exercise that claimed authority in a specific factual setting. Motion, p. 4.

As reflected in your motion, Section I.B, the Commission has already provided you such assurances in discussions with you that led to your representation before the United States Court of Appeals for the D.C. Circuit, that:

Counsel for petitioners is authorized to state that it is the NRC counsel's position that, should petitioners seek to raise and litigate *ab initio* the legal issue of whether the NRC has the authority to impose joint and several liability on minority licensee/owners, such challenge would not be precluded by petitioners' not pursuing the present litigation [petition for review of "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry," 62 FR 44071 (August 19, 1997)]. NRC counsel states that it can foresee no circumstances in which it would argue otherwise. "Petitioners' Answer to Respondents' Motion to Dismiss," in D.C. Circuit Case No. 98-1219.

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The above recitation continues to reflect the Commission's position. As indicated there, we can foresee no circumstance in which the NRC would argue against a minority owner seeking to contest the NRC's authority in a particular case to impose "joint and several regulatory responsibility"¹ against that co-owner. *Id.*, response to Comment 6.

We intend for this letter to provide the confirmation requested in the Motion. Therefore, it is unnecessary to respond to your "Conditional Request for Rehearing." If you have any questions regarding this letter, please direct them to Stephen H. Lewis of the NRC's Office of the General Counsel, at (301) 415-1684.

Sincerely,

/RA/

Annette Vietti-Cook
Secretary of the Commission

¹ As stated in the Commission's response to Comment 6 in the Motion:

The Commission notes that the term, "joint and several liability," may have connotations for contract law that the Commission did not intend to convey and that the term "joint and several regulatory responsibility" more accurately reflects the intent of the Commission's policy statement. 65 FR 46661, at 46663.

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/RA/

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² As stated in the Commission's response to Comment 6 in the Motion:

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