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Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Attention: Docketing and Service Branch

Re: Draft Policy Statement in the Restructuring and  
Economic Deregulations of the Electric Utility Industry  
(61 Fed. Reg. 49711, September 30, 1996)

Southern California Edison Company (Edison) supports efforts by the Nuclear Regulatory Commission (NRC) to address issues relating to the restructuring of electric utilities and to establish generic requirements that will allow utilities and state and local regulatory bodies to understand the impact of potential restructuring-related changes on NRC licenses. Edison believes that it is imperative that the NRC provide guidance on how it will view such changes so that regulatory uncertainty does not impede either the transition to a competitive electric market or the viability of nuclear generation in that new market.

Edison has reviewed the comments submitted by the Nuclear Energy Institute (NEI). Edison supports those comments, and offers the following comments as a supplement to those submitted by NEI.

I. NRC's Regulatory Structure Requires Some Modification To Establish  
Appropriate Rules For Industry Restructuring

- A. NRC Should Adopt Clear Criteria For Approval Of License Transfer Requests.

In its recent Draft Standard Review Plan (SRP) on Financial Qualifications and Decommissioning Funding Assurance, the NRC Staff recognized that the movement toward greater competition may lead to changes in the status of NRC licensees.<sup>1/</sup> The possibility of non-"electric utility"<sup>2/</sup> generating companies as the

<sup>1/</sup> Draft SRP, issued December 20, 1996, Attachment 1, p. 1.

<sup>2/</sup> "Electric Utility" is defined in 10 C.F.R. 50.2 as:

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majority owners and operators of nuclear facilities raises issues not thoroughly considered by NRC. Clear, unambiguous standards like those offered in the Draft SRP are necessary for Congress, state commissioners, investors and the public to have assurance of consistency and certainty in NRC's regulatory process.

1. License Transfer Requirements Should Be Appropriate For Each Stage In The Life Of A Nuclear Facility

The transfer of an operating license to a non-"electric utility" will receive NRC review, including review of the financial qualifications of the transferee. The three stages in the life of an operating nuclear facility should provide the basis for new or modified financial qualifications requirements for non-"electric utility" licensees: (1) operations, (2) prolonged outage or shutdown, and (3) decommissioning. With regard to the operational stage, Edison (1) urges the NRC to develop and issue guidance pursuant to this policy statement to better define when entities established to perform operating functions at a licensed facility would be subject to 10 C.F.R. §50.80 review, and (2) supports adoption of the standards for license transfer to non-"electric utility" licensees such as those set forth in the Draft SRP.

The prolonged outage or premature shutdown stage could require some modifications to current regulations to ensure financial qualifications for non-"electric utility" owners/licenses of nuclear power plants. For example, current regulations contain no specific requirements focused on unexpected shutdowns for regulatory, economic, or physical plant reasons. In the case of a non-"electric utility" licensee such a requirement may be appropriate, because there would be no electricity sales and, therefore, possibly no source of funds when the plant is not operating in the absence of other assured cost recovery mechanisms. The NRC could ensure financial qualification of a non-"electric utility" licensee by requiring a non-"electric utility" licensee to demonstrate reasonable assurance of obtaining the funds to cover Operations and Maintenance (O&M) expenses for a reasonable unplanned shutdown period. Such reasonable assurance could be demonstrated through retained earnings, insurance, or contractual, regulatory or

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"... any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of 'electric utility.'"

Hereinafter, the term "electric utility" is defined as set forth in 10 C.F.R. 50.2.

statutory rights to recovery of such O&M expenses, assuming no operation of the facility.

With regard to premature permanent shutdown and the decommissioning stage, the NRC should adopt additional criteria for the assurance of decommissioning funding set forth in Section I.B. of these comments.

a. Edison Encourages The NRC To Develop And Issue Guidance Regarding Applicability of Section 50.80 Review To Entities Established To Perform Operating Functions At Licensed Facilities

Section IV.C. of the Draft Policy Statement states that, "Other types of transactions, including those involving transfers of operating authority or responsibility to non-licensed organizations, have been considered by the staff on a case by case basis to determine whether Sec. 50.80 consent is required. The NRC is evaluating what types of transfers or restructurings shall be subject to 10 C.F.R. § 50.80 review." We urge the NRC to develop and issue guidance pursuant to this policy statement to better define both the circumstances under which entities established to perform operating functions at licensed facilities are subject to 10 C.F.R. § 50.80 review and the circumstances that would not require a 10 C.F.R. § 50.80 review. These entities could include limited purpose entities formed to perform limited functions such as licensed operator training and qualification, for example, as well as more general purpose entities. They may involve dual-employment personnel of both the entity and of the facility licensee. Such entities may, or may not, be partly or wholly owned by the facility licensees and may perform a range of functions under various relationships with the facility owners. Continued case by case reviews in this area will not be efficient or practical.

b. Edison Urges The NRC To Modify Existing Regulations Related To Financial Qualifications Of Non-"Electric Utility" Transferees

Current regulations, in 10 C.F.R. 50.33(f), require non-"electric utility" licensees to demonstrate possession or reasonable assurance of obtaining the funds necessary to cover estimated operations costs for the period of the license ("Reasonable Assurance Test"). Edison supports modification of existing regulations to clarify that the Reasonable Assurance Test could be met by: (1) the 5-year pro forma test -- a 5-year comparison of costs and likely market-set prices or long-term contract prices, (2) an analysis of financial strength (assuming the transfer occurs) by a recognized rating service, or a liquid asset test<sup>3/</sup> and

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<sup>3/</sup> A liquid asset test would require sufficient cash or cash equivalents to maintain financial strength in the event of adverse operating results, costs, and market prices.

(3) assurance of decommissioning funding.<sup>4/</sup> This modification to existing regulation would ensure that: (1) license transferees are financially qualified to operate the nuclear power plant for the foreseeable future; and (2) if operations become non-economic, decommissioning funding is assured.

2. Section 50.59 Should Be Used To Determine Whether Establishment Of An Independent System Operator Raises Unreviewed Safety Questions

Finally, although the electrical grid is not a part of the licensed facility itself, it is described in the facility licensing basis, and the industry developments addressed by the Draft Policy Statement include changes in the control of the grid, as the NRC has recognized. Edison recommends that the Draft Policy Statement be modified to support licensees' use of 10 CFR § 50.59 to determine that establishment of an Independent System Operator (ISO) does not involve an unreviewed safety question and that no action by the NRC is required.

B. NRC Should Adopt Additional Requirements To Provide Assurance Of Decommissioning Funds

In the Draft Policy Statement, the NRC expressed concern that, "if rapid deregulation and organizational divestiture occur concurrently with a shut down of a nuclear plant either by NRC action or by a licensee's economic decision, that licensee may not be able to provide adequate assurance of decommissioning funds."<sup>5/</sup> This concern may be valid for some licensees.<sup>6/</sup> NRC should adopt additional alternatives for assuring the collection of adequate decommissioning funds for both utility and non-"electric utility" licensees in order to deal appropriately with the issue in a deregulated and restructured environment. Such additional criteria, for both utility and non-"electric utility" licensees, would allow for adequate assurance of decommissioning funds in the event of premature shutdown through establishment by a state or federal regulatory commission of a

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<sup>4/</sup> The Draft SRP emphasizes the 5-year pro forma test and fails to mention the Reasonable Assurance Test. Edison recognizes that the Draft SRP, even if adopted, cannot change existing regulations. However, Edison supports the NRC Staff's de-emphasis of the Reasonable Assurance Test in the Draft SRP.

<sup>5/</sup> Draft Policy Statement, 61 Fed. Reg. at 49712.

<sup>6/</sup> In California, Public Utilities Code §§ 379 and 8321 et. seq ensure collection of decommissioning funding through non-bypassable rates.



non-bypassable charge associated with distribution rates of customers who receive the benefits of power generated by the nuclear power plant.<sup>1/</sup>

II. Prompt Action By the NRC To Develop Generic Rules Is Crucial To Establishing The Future of Licensed Facilities In The Restructured Electric Services Industry

One of the most fundamental elements of the current restructuring of the electric utility industry is that generation products (i.e., energy, capacity and ancillary services) will need to become competitive and market-priced, while other electric utility functions remain regulated monopolies. This means that many generating assets (including licensed facilities) will ultimately be financially separated from electric utilities as defined in 10 CFR § 50.2. In order for this separation to be accomplished in a manner that permits the continued operation of licensed facilities, the NRC must promptly develop generic guidance for the financial qualifications of non-"electric utility" licensees, including any necessary new or revised regulatory requirements. Such guidance and requirements must provide as much predictability as practical, consistent with the NRC's mission and the need to respond to changing conditions. Until this can be achieved, the future of licensed facilities in a restructured electric utility industry will remain unresolved and uncertain.

III. Antitrust Reviews

With respect to antitrust reviews, the Draft Policy Statement says that the NRC will use the regulatory reviews under 10 CFR § 50.80 to consider "significant changes." Edison expects that the NRC will continue to utilize long-standing NRC-recognized practices and interpretations of its antitrust review responsibility. For example, certain de minimis transfers of ownership (resulting in the transferee holding a total of less than 200 megawatts) have been held exempt from NRC antitrust review. NRC recently confirmed that plants licensed pursuant to Section 104 of the Atomic Energy Act are exempted from review under Section 105. Additionally, NRC precedents indicate that the NRC will not embark on a redundant antitrust review where other agencies will address the issue, where no entitlement to power is transferred, or where the transferee is a purely operating company.

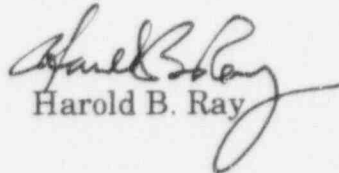
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<sup>1/</sup> The California Legislature adopted this approach in Assembly Bill 1890, Public Utilities Code § 379.

IV. Conclusion

Edison urges the NRC to continue the analysis of its current regulations initiated in the Draft SRP on Financial Qualifications and Decommissioning Funding Assurance. Edison further urges the NRC to adopt necessary modifications to establish appropriate regulations for a restructured electric services industry consistent with the dual need to avoid impeding either the transition to a competitive electric market or the future viability of nuclear generation. Critical areas for modification include modification to regulations concerning the issues addressed in the Draft SRP, assurance of decommissioning funding and financial qualifications for license transfer to non-utility licensees. Edison looks forward to working with the NRC and its staff on these issues and to the submission of specific comments on the Draft SRP.

Very truly yours,

  
Harold B. Ray