

April 1, 2004

MEMORANDUM TO: Robert A. Nelson, Chief
Uranium Processing Section
Fuel Cycle Facilities Branch, DWM/FCSS

FROM: Robert L. Johnson, Acting Chief /RA/
Special Projects Section
Decommissioning Branch, NMSS/DWMEP

SUBJECT: REVIEW OF WESTERN NUCLEAR, INC. 2004 PARENT COMPANY
GUARANTEE

By letter dated January 21, 2004, Western Nuclear, Inc. submitted a Parent Company Guarantee as financial assurance pursuant to Appendix A to 10 CFR Part 40.

The Parent Company Guarantee (PCG) does not conform to the NRC's guidance in the 1988 "Technical Position on Financial Assurance for Reclamation, Decommissioning, and Long-Term Surveillance and Control of Uranium Recovery Facilities" (Branch Position). The PCG as submitted provides for longer periods to provide alternative financial assurance than the periods found in the Branch Position. The PCG also implies that funds may be less than regulatory requirements in certain circumstances. Therefore, the licensee must make changes as detailed in the attached request for additional information.

Docket No.: SUA-56
License No.: 04001162

Attachment:

Request for Additional Information

Contact: Thomas L. Fredrichs, NMSS/DWMEP/DCB
(301) 415-5971

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OFC	DWMEP		DWMEP		DWMEP		DWMEPB	
NAME	T.Fredrichs*		R.L.Johnson*					
DATE	04/01/04		04/01/04		/ /04		/ /04	

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Request for Additional Information Western Nuclear, Inc. Parent Company Guarantee

Introduction

By letter dated January 21, 2004, Western Nuclear, Inc. submitted a Parent Company Guarantee (PCG) as financial assurance pursuant to Appendix A to 10 CFR Part 40. The letter stated that the PCG was submitted as specified in the 1988 "Technical Position on Financial Assurance for Reclamation, Decommissioning, and Long-Term Surveillance and Control of Uranium Recovery Facilities" (Branch Position).

The staff reviewed the submittal for conformance to the Branch Position. The staff found that the PCG does not conform to the Branch Position. The PCG as submitted provides for longer periods to provide alternative financial assurance than the periods found in the Branch Position. The PCG also implies that funds may be less than regulatory requirements in certain circumstances. Therefore, the licensee must make changes as detailed below.

Specific Comments

1. Revise PCG item Test #2(d)

Item Test#2(d) of the licensee's PCG requires that the parent company must have:

"Assets located in the United States amounting to at least 90 percent of the total assets of at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof." (Emphasis added)

The word "of" should be "or". As stated, the test item implies that only 90 percent of the required assets amounting to six times the cost estimates for all facilities need be located in the United States. That is incorrect.

Therefore, the licensee must revise its PCG to change "of" to "or" in item Test #2(d).

2. Revise Section 7(c) to remove the words "if any" from the provision to deposit funds to cover long-term surveillance and control.

Section 7(c) of the licensee's PCG states:

"In addition, the guarantor shall cover the eventual payment of the amount for long-term surveillance and control, if any, as required by 10 CFR Part 40, Appendix A." (Emphasis added)

Criterion 10 of Appendix A to 10 CFR Part 40 requires the deposit of funds for long-term surveillance and control of a minimum amount of \$250,000 (1978 dollars), with a provision to increase the minimum amount under certain circumstances. No provision is made to reduce the minimum. The underlined words "if any" in Section 7(c) imply that no funds would be deposited under some circumstances. That is contrary to the regulation.

Therefore, the licensee must remove the words "if any" from Section 7(c).

3. Revise Section 9 of the PCG to conform to the time periods stated in the Branch Position for notice and establishment of alternative financial assurance

Section 9 of the licensee's PCG states:

"The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, it fails to meet the financial test criteria, guarantor shall send within 90 days of the end of the fiscal year, by certified mail, notice to NRC that guarantor intends to provide alternative financial assurance as specified in 10 CFR Part 40 and Appendix A in the name of the licensee. Within 120 days after the end of the fiscal year, the guarantor shall establish such financial assurance if Western Nuclear, Inc. has not done so." (Emphasis added)

Section 8 of the model language in the Branch Position states that notice shall be sent within 60 days, not 90 days.

Section 8 of the model language in the Branch Position states that alternative financial assurance shall be established within 90 days, not 120 days.

Therefore, the licensee must revise its PCG to reduce the notice period and the period to establish alternative financial assurance to conform with the time periods stated in the Branch Position.

4. Revise Section 16 to reduce to 60 days the period for guarantor to provide for alternative financial assurance if Western Nuclear fails to provide financial assurance

Section 16 of the licensee's PCG states:

"The guarantor agrees that if Western Nuclear, Inc. fails to provide alternative financial assurance as specified in 10 CFR Part 40 and Appendix A, as applicable, and obtain written approval of such assurance from NRC within 90 days after a notice of cancellation is received by both the NRC and Western Nuclear, Inc., the guarantor shall provide such alternative financial assurance in the name of Western Nuclear, Inc. or make full payment under the guarantee." (Emphasis added)

The Branch Position provides for a 60 day period, not 90 days, for the licensee to provide and obtain approval of alternative financial assurance.

Therefore, the licensee must revise Section 16 of the PCG to reduce to 60 days the period for guarantor to provide for alternative financial assurance if Western Nuclear fails to provide financial assurance.