



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

April 20, 2001

OFFICE OF THE  
SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-01-0049

TITLE: PROPOSED RULE ON DECOMMISSIONING  
TRUST PROVISIONS

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 20, 2001.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-01-0049

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	4/12/01
COMR. DICUS					X	4/16/01
COMR. DIAZ	X				X	4/12/01
COMR. McGAFFIGAN	X				X	4/12/01
COMR. MERRIFIELD	X				X	4/12/01

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 20, 2001.

**AFFIRMATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook  
Secretary of the Commission

**FROM:** CHAIRMAN MESERVE

**SUBJECT:** SECY-01-0049 - PROPOSED RULE ON DECOMMISSIONING TRUST PROVISIONS

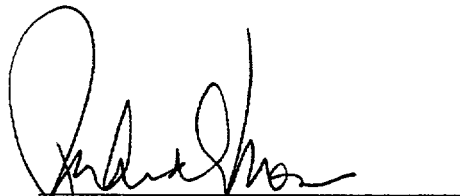
Approved  X w/Comment  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

**COMMENTS:**

In light of the deregulation of the electric utility industry, the staff has proposed revisions to 10 C.F.R. § 50.75 in order to ensure that funds set aside for the decommissioning of power reactors will be available when necessary. The revisions provide that the terms of a decommissioning trust agreement must be acceptable to the NRC and outline certain general requirements for any such trust. I believe that the proposed rule is necessary and appropriate. In addition, it should serve to expedite the review of license transfer applications by ensuring that all licensees will be able to use a standard approach in developing decommissioning trust agreements. Accordingly, I approve the publication of the proposed rule and the issuance of the draft regulatory guide for public comment. I attach certain edits of the Federal Register notice and the proposed rule.

I also certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities.

  
SIGNATURE

April 12, 2001  
DATE

Entered on "AS" Yes \_\_\_\_\_ No \_\_\_\_\_

decommissioning trust fund costs, from approved rates charged ratepayers. If, under deregulation, PUCs and/or FERC no longer approve rates they will also no longer have a basis for establishing stringent accounting and financial controls. Without these controls, PUCs may determine that they have no basis for specifying terms and conditions for nuclear reactor decommissioning trust funds or for monitoring those trust funds.

- Changes in ownership of nuclear generating facilities. Under deregulation, vertically integrated public utilities that generate electricity, own and manage the transmission system, and sell power to the ultimate consumers may gradually become less prevalent. Instead, generating facilities may be separated (i.e., "spun off") within a holding company structure or sold to power-producing companies that sell electricity as a commodity to other companies that service consumers. Currently, certain energy companies that are non-utility suppliers of electricity have announced their intention to acquire nuclear power plants. After these acquisitions, State PUCs and/or FERC may no longer have jurisdiction over the energy company obtaining the reactors. NRC is required to determine the suitability of transferring reactor licenses from the former licensee to a new licensee.

To date, as part of its review of requests for license transfer in connection with the sale of nuclear power reactors, the NRC staff has examined whether reasonable assurance of decommissioning funding will continue to be provided. As a result, the NRC staff is proposing to both codify existing practice and consider enhancements to trust agreements to strengthen these agreements in the future environment of deregulation. As a condition for NRC staff approval, the NRC has required certain clauses (some that parallel criteria in Regulatory Guide 1.159 and others that parallel FERC requirements) to be included in decommissioning trust

funds. The NRC staff has essentially been using these evaluative tests in its review of decommissioning trusts in license transfers involving an unregulated license. In view of deregulation, the NRC staff believes that these tests are also appropriate for evaluating the trust agreements of all NRC power reactor licensees.

This section of the paper presents a set of evaluative tests for assessing whether particular terms and conditions for decommissioning trust funds will help meet NRC's goals of providing "reasonable assurance that adequate funds are available," and that lack of funds will not result in delays in decommissioning creating public health and safety problems.

The following tests do not address the amount of funds in the decommissioning trust, a topic that NRC dealt with in its 1998 rule (63 FR 50465). However, the tests address how to assess the certainty that assured funds will be available. The tests were obtained by reviewing existing requirements of the NRC, the Internal Revenue Service, FERC, and several States that currently apply to decommissioning trusts, as well as non-binding recommendations created by those agencies for those trusts.

Certainty can be evaluated under several basic tests:

Test (1) Is the trust fund valid and enforceable?

The trust instrument should be required to include information that helps to ensure and to demonstrate its validity. A requirement that the instrument be valid under State law, while helpful, does not identify any features of the trust that demonstrate its validity. The trust must be in writing and include the names and signatures of the parties entering into the agreement; their titles; the dates of signing (and the effective date, if different); notarization of the signatures; a description of the basic agreement being entered into; and an affirmative statement that the trustee accepts the appointment.

24018) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, August 1988).<sup>2</sup> Therefore, promulgation of this rule would not introduce any impacts on the environment not previously considered by the NRC. The NRC staff is not aware of any other documents related to the environmental impact of this action.

The foregoing constitutes the environmental assessment and finding of no significant impact for this proposed rule.

The determination of this environmental assessment is that there would be no significant offsite impact to the public from this action. However, the general public should note that the NRC welcomes public participation. The NRC has also committed to complying with Executive Order (EO) 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994, in all its actions. Therefore, the NRC has also determined that there are no disproportionate, high, and adverse impacts on minority and low-income populations. In the letter and spirit of EO 12898, the NRC is requesting public comment on any environmental justice considerations or questions that the public thinks may be related to this proposed rule but somehow were not addressed. The NRC uses the following working definition of "environmental justice:" the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Comments on any aspect of the environmental assessment, including environmental justice, may be submitted to the NRC as indicated under the ADDRESSES heading.

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<sup>2</sup>Copies of NUREG-0586 are available for inspection or copying for a fee from the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20855-0001. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328 (telephone (202) 512-1800); or from the National Technical Information Service (NTIS) by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

(i) Prepayment. Prepayment is the deposit made preceding the start of operation into an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. Prepayment may be in the form of a trust, escrow account, Government fund, certificate of deposit, deposit of Government securities or other payment acceptable to the NRC. Such trust, escrow account, Government fund, certificate of deposit, deposit of Government securities, or other payment shall be established pursuant to a written agreement and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency or an entity whose operations <sup>relating to</sup> ~~in which~~ the prepayment deposit is ~~managed~~ are regulated and examined by a Federal or State agency. A licensee may take credit for projected earnings on the prepaid decommissioning trust funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the projected decommissioning period. This includes the periods of safe storage, final dismantlement, and license termination, if the licensee's rate-setting authority does not authorize the use of another rate. However, actual earnings on existing funds may be used to calculate future funds needs.

(ii) External sinking fund. An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. An external sinking fund may be in the form of a trust, escrow account, Government fund, certificate of deposit, deposit of Government securities, or other payment acceptable to the NRC. Such trust, escrow account, Government fund, certificate of deposit, deposit of Government securities, or other payment shall be established

pursuant to a written agreement and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency or an entity whose operations ~~is~~ <sup>relating to the</sup> ~~which the~~ external sinking fund ~~is managed~~ are regulated and examined by a Federal or State agency. A licensee may take credit for projected earnings on the external sinking funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the decommissioning period. This includes the periods of safe storage, final dismantlement, and license termination, if the licensee's rate-setting authority does not authorize the use of another rate. However, actual earnings on existing funds may be used to calculate future fund needs. A licensee, whose rates for decommissioning costs cover only a portion of such costs, may make use of this method only for that portion of such costs that are collected in one of the manners described in this paragraph, (e)(1)(ii). This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

\* \* \* \* \*

(h)(1) Licensees using prepayment or an external sinking fund to provide financial assurance shall provide in the terms of the trust, escrow account, government fund, or other account used to segregate and manage the funds that--

(i) The trustee, manager, investment advisor, or other person directing investment of the funds:

(A) Is prohibited from investing the funds in securities or other obligations of the licensee or any other owner or operator of the power reactor or their affiliates, subsidiaries, successors or assignees, or in securities of any other entity owning one or more nuclear power plants, except for investments tied to market indices or non-nuclear sector mutual funds;



NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER DICUS  
SUBJECT: **SECY-01-0049 - PROPOSED RULE ON DECOMMISSIONING TRUST PROVISIONS**

Approved  Disapproved  Abstain

Not Participating

COMMENTS:

*none*

*Aneta Joy Dicus*  
\_\_\_\_\_  
SIGNATURE

*April 16, 2001*  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

NOTATION VOTE

RESPONSE SHEET

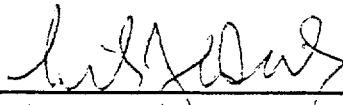
TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER DIAZ  
SUBJECT: **SECY-01-0049 - PROPOSED RULE ON DECOMMISSIONING TRUST PROVISIONS**

Approved  Disapproved  Abstain

Not Participating

COMMENTS:

I approve the staff's recommendation that the Commission publish for comment the draft proposed rule on decommissioning trust agreements. Specification of essential criteria for such agreements should promote predictable oversight, assure safeguarding of decommissioning trusts in an era of deregulation and restructuring, and facilitate efficient license transfer reviews. At the same time, a wide variety of trust instruments are in use and the Commission should guard against unnecessary prescription as the rulemaking is completed.

  
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SIGNATURE

1.12.01  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

REC'D BY HJD --

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NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MCGAFFIGAN  
SUBJECT: **SECY-01-0049 - PROPOSED RULE ON DECOMMISSIONING TRUST PROVISIONS**

Approved   X   Disapproved        Abstain       

Not Participating       

COMMENTS: *See memo edts to Federal Register Notice and draft regulatory guide.*

*Edward Mc Gaffigan*  
\_\_\_\_\_  
SIGNATURE

*April 12, 2001*  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes   X   No

10 CFR 50.75(h) to its regulations. The changes in §50.75(e) specify that the trust should be an external trust fund in the United States, established pursuant to a written agreement and with an entity that is a State or Federal government agency or an entity whose operations are regulated by a State or Federal agency. Paragraph 50.75(h) will reference the other paragraphs in § 50.75 where necessary and will discuss the terms and conditions that the NRC believes are necessary to ensure that funds in the trusts will be available for their intended purpose. As an accompaniment to this rulemaking, the NRC intends to update Regulatory Guide 1.159 to include sample trust fund language containing these terms and conditions.

#### IV. Discussion

The NRC believes that certain decommissioning trust language should be standardized to increase assurance of the protection of public health and safety by requiring that the decommissioning trusts: (1) ensure that special care is taken to safeguard the trust corpus from investment risks, (2) provide adequate information concerning the trust to the NRC, and (3) provide safeguards against improper payments from the trust.

These issues are now of particular interest to the NRC because deregulation of the electric utility industry can potentially lead to several changes in the structure of ownership of nuclear power reactors that could affect reactor decommissioning trust funds. These changes include the following:

- Relaxation or elimination of regulatory oversight by State Public Utility Commissions (PUCs) or the Federal Energy Regulatory Commission (FERC).

With utility industry deregulation, State PUCs and/or FERC may no longer have jurisdiction over electricity rates of the kind that they now exercise. Under regulation, utilities are reimbursed for their costs, including nuclear

X

decommissioning trust fund costs, from approved rates charged ratepayers. If, under deregulation, PUCs and/or FERC no longer approve rates they will also no longer have a basis for establishing stringent accounting and financial controls. Without these controls, PUCs may determine that they have no basis for specifying terms and conditions for nuclear reactor decommissioning trust funds or for monitoring those trust funds.

- Changes in ownership of nuclear generating facilities. Under deregulation, vertically integrated public utilities that generate electricity, own and manage the transmission system, and sell power to the ultimate consumers may gradually become less prevalent. Instead, generating facilities may be separated (i.e., "spun off") within a holding company structure or sold to power-producing companies that sell electricity as a commodity to other companies that service consumers. Currently, certain energy companies that are non-utility suppliers of electricity have announced their intention to acquire nuclear power plants. After these acquisitions, State PUCs and/or FERC may no longer have jurisdiction over the energy company obtaining the reactors. NRC is required to determine the suitability of transferring reactor licenses from the former licensee to a new licensee.

To date, as part of its review of requests for license transfer in connection with the sale of nuclear power reactors, the NRC staff has examined whether reasonable assurance of decommissioning funding will continue to be provided. As a result, the NRC staff is proposing to both codify existing practice and consider enhancements to trust agreements to strengthen these agreements in the future environment of deregulation. As a condition for NRC staff approval, the NRC has required certain clauses (some that parallel criteria in Regulatory Guide 1.159 and others that parallel FERC requirements) to be included in decommissioning trust

- **External Sinking Fund** - A fund established and maintained in an account segregated from the licensee's assets and outside the licensee's administrative control. The fund may be in the form of accounts or investments acceptable to the NRC, similar to those described above for prepayment but which are collected over the remaining operating life of the reactor or, in the case of a permanently shut down power reactor, over a period to be determined by the licensee and subject to NRC approval.
- **Guarantee Method** - can be in the form of surety bonds, letters of credit, or insurance; for non-electric-utility applicants and licensees, parent company guarantees may be used when a financial test specified in Appendix A to 10 CFR Part 30 is used.
- **Statement of Intent** by a government agency, if applicable, indicates that funds for decommissioning will be obtained when necessary.

To simplify the preparation, submittal, and review of information on funding methods acceptable for its non-reactor licensees, the NRC has prepared Regulatory Guide 3.66, "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72" (Ref. 4). This document contains recommended wording for financial assurance instruments. The instruments in Regulatory Guide 3.66 are included in modified form in this regulatory guide in Appendix B and are referenced in Regulatory Position 2. Because of the more extensive economic regulation faced by power reactor licensees as opposed to materials licensees, the sample wording is provided for illustration and is not necessarily recommended for use by any individual licensee.

## C. REGULATORY POSITION

This section describes methods of implementing the general requirements for financial assurance for decommissioning for reactor licensees and applicants who must comply with 10 CFR Part 50.

Regulatory Position 1 provides guidance to applicants and licensees on establishing the amount of funds necessary for decommissioning as required by the regulations. Regulatory Position 2 provides guidance on methods acceptable to the NRC for assuring funds.

### 1. AMOUNT OF FUNDS FOR DECOMMISSIONING

#### 1.1 Funding Requirements for the Decommissioning Report/Initial Amounts

##### 1.1.1 Power Reactor Applicants and Licensees

For power reactor applicants and licensees, the initial certification amount of funds for decommissioning is based on the equations in 10 CFR 50.75(c)(1) and represents the minimum funding level that applicant and licensees must meet.

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X At its discretion, a power reactor licensee may submit a certification based either on the formulas provided in 10 CFR 75(c)(1) and (2) or, when a higher funding level is desired, on a facility-specific cost estimate that is equal to or greater than that calculated in the formula in 10 CFR 50.75(c)(1) or (2). A facility-specific cost estimate may include non-NRC-required costs, but such costs should be identified. If such a combined submittal is used, licensees should ensure that the NRC-required cost estimate for decommissioning costs as defined in 10 CFR 50.2 is equal to or greater than the amount stated in the formulas in 10 CFR 50.75(c)(1) and (2) as the basis for justifying a higher than minimum funding level. For certification amounts below the amount stated in the formulas in 10 CFR 50.75(c)(1) and (2), licensees must submit an exemption request containing details as outlined in Regulatory Position 1.4.

The purpose of the decommissioning report required under 10 CFR 50.33(k) and described in 10 CFR 50.75(b) and (c) is to provide reasonable assurance that licensees have a viable plan to accumulate funds in the certification amount, adjusted for inflation, by the projected time of permanent cessation of operations. Each licensee should submit a statement indicating the certification amount and inflation adjustment appropriate for its reactor or reactors together with a photocopy or conformed copy of the instrument being used to provide assurance of decommissioning funding. If an external sinking fund is being used, the proposed amount of annual (or more frequent) payments should be provided.

#### 1.1.2 Non-Power Reactor Applicants and Licensees

For non-power-reactor applicants and licensees, the amount of funds is to be based on a cost estimate for decommissioning the facility and submitted to the NRC in a report required by 10 CFR 50.33(k). The cost estimate for decommissioning need not be an exact accounting of the actual cost of decommissioning, but rather an estimate of the costs for decommissioning the reactor. The PNL studies (Ref. 1) may be used by applicants or licensees for initial cost estimates with suitable adjustments to account for the facility-specific differences as discussed in Regulatory Position 1.4.2. The level of detail necessary to support the cost estimate is discussed in Regulatory Position 1.4.

#### 1.2 Adjustments to Certification Amounts and Licensees

For electric utility applicants and licensees, certification amounts described in Regulatory Position 1.1 are to be adjusted annually based on 10 CFR 50.75(b) and (c)(2) and should be available for NRC inspection, as requested. The adjustment factor in 10 CFR 50.75(c)(2) is  $0.65L + 0.13E + 0.22B$ , where L, E, and B are escalation factors for labor, energy, and waste burial costs respectively. Although these adjustments are to be made annually, they need not be submitted to the NRC. Reasonably recent editions of the documents cited below should be used.

The adjustment factor<sup>1</sup> for labor, L, can be obtained from "Monthly Labor Review," published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). Specifically, the appropriate regional data from the table (currently Table 24) entitled "Employment Cost

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<sup>1</sup> The derivation of the adjustment factors is explained in greater detail in Sections 3.1-3.5 of "Report on Waste Burial Charges," NUREG-1307, Revision 9, September 2000 (Reference 5).

not directly related to the long-term storage, radiological decontamination and dismantlement (D&D) of the facility, or radiological decontamination of the site. If non-decommissioning cost items are included, these items should be identified separately.

Cost estimates should provide costs for each of the following (or similar) major activities and phases with a level of detail appropriate to the type of cost estimate.

- Major radioactive component removal — Reactor vessel and internals, steam generators, pressurizers, large bore reactor coolant system piping, and other large components that are radioactive to a comparable degree.
- Radiological D&D — Removal of remaining radioactive plant systems, including radiological decontamination.
- Management and support (undistributed costs) — Labor costs of utility support staff and decommissioning contractor staff, energy costs, regulatory costs, small tools, insurance, etc.
- Waste packaging/shipping — Placing waste in packages and shipping to waste vendors or burial site.
- Waste burial or waste vendor — Waste burial charges, including waste vendors' processing fees.
- Contingency — Allowance for unexpected costs.

Cost estimates should also include the assumptions, references, and bases for unit costs used in developing the estimates, as well as a description of how inflation is accounted for in the cost estimate. The cost estimate should be provided in current-year dollars. Escalation of the waste disposition costs are considered separately from the general inflation rate applicable to labor, material, and energy costs. Escalation factors are discussed in Regulatory Position 1.2.

#### **1.4 Adjustments to Cost Estimates**

In order to maintain adequate funds until completion of decommissioning, funding provisions should contain procedures for periodic review and adjustment of the initial estimate and subsequent amounts set aside, during both operation and any storage periods, based on the following.

##### **1.4.1 Inflation**

The effect of inflation on the estimated cost should be determined. For those licensees subject to the certification requirements of 10 CFR 50.75(b), the certification amount should be adjusted annually using the formula in 10 CFR 50.75(c)(2) (see Regulatory Position 1.2). For licensees using site-specific cost estimates (i.e., research and test reactor licensees, power reactor licensees not covered by 10 CFR 50.75(c), or licensees submitting preliminary or proposed decommissioning plans pursuant to 10 CFR 50.75(f) and 50.82(a)), new cost estimate studies should be conducted periodically to



determine whether the estimate reflects cost changes from inflation or other factors. As an alternative to performing new site-specific cost estimates, licensees may use standard measures of price indexing such as the annual Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, or the inflation factor derived from the Implicit Price Deflator for the Gross National Product as published in the "Survey of Current Business" by the U.S. Department of Commerce or in "Economic Indicators" by the Council of Economic Advisors. The licensee may also use the factors indicated in Regulatory Position 1.2 for escalating the principal components of the cost estimate. Estimates of future inflation should bear a reasonable relationship to recent (i.e., within 10 years) economic performance or other relevant economic conditions and factors. The licensee should document the bases for all estimates of past and future inflation.

#### 1.4.2 Technological and Status Changes

For plant-specific decommissioning cost estimates, the effect of technological changes or changes in plant status (e.g., whether the plant has been shut down for an extended period) on the cost estimate should be determined. This could include reasonably determined recent developments in decontamination, waste processing and disposal, or cutting-equipment and other technology, updated information about the facility conditions such as larger levels of contamination than anticipated, updated waste disposal conditions, updated residual radioactivity limits, and experience gained from actually decommissioning similar facilities.

#### 1.4.3 Frequency of Adjustment

Adjustment to the certification amount and site-specific cost estimates should be made at least once a year for the effects described in Regulatory Position 1.5.1.

Adjustment to site-specific cost estimates for the effects described in Regulatory Position 1.5.2 should be made according to the amount of change experienced, as appropriate, but at least once every 5 years. Adjustments to funding levels to account for adjustments to the certification amount or site-specific cost estimates are addressed in Regulatory Position 2.2.5.

## 2. METHODS OF FINANCIAL ASSURANCE

Methods that are considered acceptable for reactors for assuring the availability of funds for decommissioning are in 10 CFR 50.75. The following sections provide specific guidance to licensees for complying with the various types of methods specified in 10 CFR 50.75.

### 2.1 Guidance Applicable to All Methods of Financial Assurance

2.1.1 If more than one licensee owns a facility, the method should provide clear indication of the funding provisions made by each licensee or agent acting for a licensee. Multiple licensees may, at their discretion, pool decommissioning funds for a jointly-owned facility or facilities as long as the contribution of each licensee and each facility are separately identifiable within the methods being used. Decommissioning funding plans may be submitted either jointly or separately by co-licensees. However, each licensee should

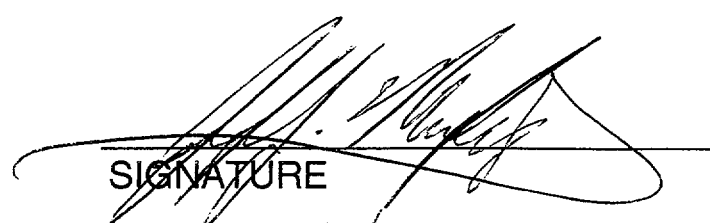
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MERRIFIELD  
SUBJECT: **SECY-01-0049 - PROPOSED RULE ON DECOMMISSIONING TRUST PROVISIONS**

Approved  Disapproved  Abstain   
Not Participating

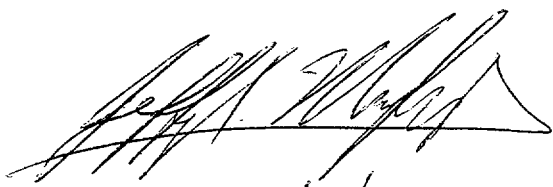
COMMENTS: *See attached comments.*

  
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SIGNATURE  
  
\_\_\_\_\_  
4/12/01  
DATE

Entered on "STARS" Yes  No

**COMMENTS OF COMMISSIONER MERRIFIELD ON SECY-01-0049**

I approve the staff's recommendation to issue the proposed rule on decommissioning trusts. The staff did a commendable job identifying and addressing issues raised about trust agreements in a deregulated market. As a future endeavor, I would encourage the staff to put in place an effective process to track receipt of notices from trustees indicating either an intention to amend a trust agreement or to make disbursements or payments from the trusts. A process is necessary because the wording of the proposed rule permits the trustee to undertake these activities once it has notified the NRC, if there is no objection from the NRC within 30 days of the notice. Thus, NRC silence will indicate no objection and permit the transaction to take place. While I believe the "no objection" mechanism is appropriate, I think it would be prudent to bolster it with an internal process that tracks these activities and ensures that the deadlines are not inadvertently missed.



4/12/01