

January 16, 1998

Mr. John C. Hoyle
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

ATTENTION: Rulemakings and Adjudications Staff

REFERENCE: Request for Comments on Proposed Rule, "Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors," 62 Fed. Reg. 58690 (October 30, 1997)

Dear Mr. Hoyle:

The Nuclear Energy Institute (NEI),¹ is submitting the following comments on the proposed rule, "Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors," which was published in the Federal Register on October 30, 1997. These comments supplement the comments that NEI submitted on January 9, 1998. It is appropriate that the Nuclear Regulatory Commission (NRC) update the regulations to reflect the financial requirements for shutdown nuclear power reactors as a number of plants will reach the end of the operating license term after the turn of the century. Shortly before permanent shutdown one of the issues to be addressed is; "What is the financial protection requirements for a shutdown nuclear reactor(s)?"

NEI endorses the NRC proposed rulemaking to reduce the requirements for property and liability insurance coverage once the reactor enters a permanently shutdown classification. As presented in the proposal, it is important for the reactor operator to know specifically what the requirements are and what phase of shutdown the plant needs to be in order to take advantage of the reduction. It is a justifiable cost savings associated with reduced coverage because of reduced potential for exposures from a permanently shutdown reactor. The amount of insurance should be commensurate to the risk.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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The following specific comments are provided:

Grandfathering of Exemptions

In addition to the comment on grandfathering for shutdown reactors, the proposed rule provides no indication of how the requirements will affect operating plants that have been granted financial protection exemptions. By virtue of having been granted these exemptions, the plants have been evaluated and found to have adequate coverage at the respective reduced levels. As stated in the Regulatory Analysis for Rulemaking, the primary objective of this proposed rule is to eliminate unnecessary regulatory burdens for permanently shutdown facilities by allowing reduced onsite and offsite liability coverage without having to go through the exemption process. The proposed rule therefore, needs to be modified to clearly state that facilities which have been granted financial protection exemptions, either while operating or shutdown, will have the option to maintain those exemptions or use what is promulgated in the final rule.

Release From Participation in Secondary Financial Protection

The NRC has proposed that the facility be released from participation in the Secondary Financial Protection (SFP) program when the reactor has been defueled, permanently shutdown, no reactor operations are on the site and fuel cladding temperature is 565°C or less, (as this would assure that a postulated loss-of-fuel cooling event would not have significant offsite impact). NEI supports the removal of a reactor from the SFP. However, the conditions for removal proposed by the NRC should be reduced. NEI agrees with the NRC that the reactor should be defueled and permanently shutdown, but does not agree that removing the reactor from participation in the SFP should be dependent on other reactors operating on the site, or be a function of the fuel cladding temperature.

The operations of other reactors on the site have no impact on the need for participation by the shutdown reactor in the SFP. The NRC has accepted this situation already by releasing a number of reactors from the SFP while other reactors are operational on the same site i.e. TMI-2, San Onofre 1 and Indian Point 1.

The Regulatory Analysis discussed the loss of spent fuel pool coolant, however the proposed rule refers to loss of spent fuel pool cooling. Loss of spent fuel pool cooling is beyond design basis events and is not considered a credible event. To put restrictions on the liability requirements due to a non-credible event is not reasonable. In the event of a loss of spent fuel pool cooling, it would take considerable time before a zircaloy cladding fire or gap release could occur, therefore, it would be an incredible event as well.

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Based on the above NEI recommends that the proposed rule be revised to allow that once the reactor has been defueled and permanently shutdown it can be released from participating in the SFP. Each reactor is issued an insurance certification which provides for participation in the SFP, therefore, the certification can be revised to relieve the reactor from participating in the SFP without impacting the \$200 million site primary liability limit.

Shutdown Reactor Risks

The proposed rule allows for reductions in the liability and property insurance levels as the site goes through the phases of decommissioning. Per the proposed rule the first reduction is available when the reactor has been defueled, permanently shutdown, no operating reactors are on the site, and the fuel cladding has cooled to less than 565°C. In this case the reactors can discontinue participation in the SFP however, the site is required to have \$50 million of property insurance and \$100 million of liability insurance for each reactor on site. This requirement is not reasonable. If the site has three shutdown reactors it would require \$150 million of property insurance which is available, but \$300 million of primary liability insurance is not commercially available. The next reduction occurs when the spent fuel is either shipped off site or placed in dry cask storage and there is 1,000 gallon or greater radioactive liquid onsite. At this stage the site requirements are for \$50 million of property and \$50 million of liability insurance for each reactor. This also is not reasonable. As discussed in the Regulatory Analysis the only accident that may significant consequences would be a fuel handling accident. The proposed regulation however requires that the fuel has been either shipped off site or placed in dry cask storage, this negates the probability of a fuel handling accident. The reduction to \$25 million liability coverage and \$25 million of property coverage per reactor occurs when the site inventory of radioactive liquids have been reduced to less than 1,000 gallons, with further reduction to no property insurance requirements if the site is in the confirmatory survey phase. NEI believes that insurance requirements once a site has gone into decommissioning amounts to contingency on top of contingency. The decommissioning plan provides for spills and other upset conditions with contingency funding for these events, therefore, having insurance in addition to the decommissioning funding is double contingency and not a reasonable expectation.

Based on the above NEI recommends that the proposed rule be revised to allow that when a reactor is defueled and permanently shutdown, the fuel has been shipped offsite or is in onsite dry cask storage and there are no operating reactors on site there are no longer any requirements for property or liability insurance.

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We would be pleased to discuss these comments and to respond to any questions the NRC may have.

Sincerely,

Lynnette Hendricks