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Decommissioning Rulemaking Status Summary
and Recommended Course of Action
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from DCPM

- In SECY 99-168, NRR proposed to the Commission that the regulations applicable to decommissioning facilities be revised in two steps. The first step would be an integrated rulemaking, combining previous rulemaking efforts in the areas of EP, security, insurance, staffing & training, and backfit. The rulemaking would be preceded by a risk study on which the decommissioning rules would be based. The second proposed step (the regulatory improvement initiative) would be a rulemaking to review and revise all Part 50 regulations that apply to decommissioning, in order to clarify for the industry and the public what NRC regulations govern decommissioning.

- The SRM for 99-168 approved the NRR plan, however limited the second step (regulatory improvement initiative) to reviewing and binning the existing Part 50 regulations. The Commission directed that the staff provide additional information on resource impacts and legal considerations prior to proceeding with rulemaking for the regulatory improvement initiative.

- Originally, the rulemaking plan for the integrated rulemaking was to follow the risk study by about two months. The risk study was originally due at the end of March, 2000, but required additional time to ensure a high quality draft product for public comment, and to completely respond to comments on the draft report, including those from the ACRS. However the decision was made to go forward with the integrated rulemaking plan before the risk study was finalized. The decision assumed that the results of the final risk study would not substantially change from the results of the draft of the risk study.

- The integrated rulemaking plan (SECY 00-0145) was provided to the Commission on 6/28/00.

- Three complicating factors have surfaced that must be considered before now moving forward:

* NEI provided a "White Paper" in April 00, wherein they proposed to combine all decommissioning rulemaking into one effort.

* Internal to NRR, a proposal has been forwarded by DSSA to make the decommissioning rulemaking performance based.

* The industry strongly disagreed with the risk study results in the seismic area and desires further discussions prior to finalizing the risk report. The seismic risk dominates and if reduced may result in a significant change in the final results of the risk study, which could potentially significantly impact the rulemaking.

- In SECY 00-0145, the staff committed to the Commission to consider the NEI White Paper and the DSSA performance based approach when responding to the Commission with the additional information on the Regulatory Improvement Initiative (present due date of 9/15/00). This commitment was made because there was insufficient time to complete those actions and meet the deadline of June 30 for having the integrated rulemaking plan to the Commission.

- NRC staff met with NEI on July 19. At this meeting NEI was provided with the results of a BNL study on the applicability of requirements in 10 CFR Part 50 to permanently shutdown plants. This study was done to support the regulatory improvements initiative. The staff requested their comments on the study and a prioritization of proposed changes to the

9/23/00

regulations. The staff plans to meet in September with NEI to discuss the results of their review of the BNL report and their overall approach to the regulatory improvements program contained in their White Paper.

- A this point, the staff's previous decision to go forward with the rulemaking proposals ahead of the risk study final results should be reconsidered. If the risk study results significantly change, the staff would have to revise the integrated rulemaking, as a minimum, and may elect to more favorably consider the NEI approach of a single rulemaking effort. Before the staff provides any additional proposals to the Commission, the staff should complete discussions with NEI on the direction to take in rulemaking. This cannot reasonably occur until the risk study results are finalized. Also, NEI has not yet provided the NRC staff with a prioritization of the remaining regulatory issues in the regulatory improvement effort. The staff also needs additional time to fully consider the performance based rulemaking concept, which could be impacted by the risk study results.

Given the issues remaining to be resolved, NRR should proceed as follows:

- Meet with NEI on August 23 to discuss seismic issues as they relate to the risk study (Presently scheduled).
- Finalize the risk study results.
- Depending on the results of the risk study, meet with NEI to obtain industry perspectives on future rulemaking. Also assess the performance based approach concept.
- Provide the Commission with a SECY paper three months after the risk study is finalized with recommendations on moving forward.

To accomplish the above, NRR would have to obtain an extension to the due date for the risk study, and for the NRR SECY paper on the regulatory improvement initiative. This would also have the effect of putting on hold the integrated rulemaking effort.