



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

November 10, 1999

MEMORANDUM TO: David B. Matthews, Director  
Division of Regulatory Improvement Programs  
Office of Nuclear Reactor Regulation

FROM: David L. Meyer, Chief *W. J. Meyer*  
Rules and Directives Branch  
Division of Administrative Services  
Office of Administration

SUBJECT: REVIEW AND CONCURRENCE ON A RULEMAKING PLAN,  
"DECOMMISSIONING TRUST PROVISIONS" (PART 50)

The Rules and Directives Branch has reviewed and concurs, subject to our markup, on the rulemaking plan concerning decommissioning trust provisions. We have attached a marked copy of the rulemaking plan that presents our comments.

If you have any questions regarding our review, please contact me at 415-7162.

Attachment: As stated

**FOR:** The Commissioners

**FROM:** William D. Travers  
Executive Director for Operations

**SUBJECT:** PART 50 RULEMAKING PLAN FOR DECOMMISSIONING TRUST  
PROVISIONS

**PURPOSE:**

To obtain your approval to proceed with rulemaking to revise 10 CFR Part 50, in accordance with the attached rulemaking plan.

**DISCUSSION:**

This rulemaking effort responds to an August 10, 1999, staff requirements memorandum (SRM), "Summary of Decommissioning Fund Status Reports." Our purpose for pursuing the rulemaking effort is to ensure that decommissioning trust agreements are in a form acceptable to the NRC in order to increase assurance that decommissioning funds will be available for their intended purpose, especially in light of economic deregulation and restructuring of the electric utility industry. Also, based on our experience with approving the transfers of the operating licenses of the Three Mile Island Unit 1 and Pilgrim nuclear power stations, we believe this rulemaking would expedite similar transfers in the future by providing regulatory predictability and stability for license transfers. The staff also intends to develop guidance that will specify more fully the provisions of the decommissioning trust agreements.

**COORDINATION:**

The Office of the General Counsel has no legal objection to this rulemaking plan.

**CONTACT:**  
Brian J. Richter, NRR  
(301) 415-1978

The Commissioners

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The Office of the Chief Financial Officer has reviewed the rulemaking plan for resource implications and has no objections. The resources to conduct this rulemaking effort and develop guidance (approximately 0.5 FTE spread over a 2-year period) are within the current budget.

The Office of the Chief Information Officer has reviewed the rulemaking plan for information technology and information management implications and concurs in it.

**RECOMMENDATION:**

We recommend that the Commission approve our plan to proceed with the Part 50 rulemaking. We will take no further action until the SRM is issued.

William D. Travers  
Executive Director  
for Operations

Attachment: As stated

The Office of the Chief Financial Officer has reviewed the rulemaking plan for resource implications and has no objections. The resources to conduct this rulemaking effort and develop guidance (approximately 0.5 FTE spread over a 2-year period) are within the current budget.

The Office of the Chief Information Officer has reviewed the rulemaking plan for information technology and information management implications and concurs in it.

**RECOMMENDATION:**

We recommend that the Commission approve our plan to proceed with the Part 50 rulemaking. We will take no further action until the SRM is issued.

William D. Travers  
Executive Director  
for Operations

Attachment: As stated

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\*See previous concurrence

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NAME	RWBorchardt		PLohaus		JGray		DMeyer		BShelton
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OFC	OCFO		OEDO						
NAME	JFunches		WDTravers						
DATE	/ /99		/ /99						

The Office of the Chief Financial Officer has reviewed the rulemaking plan for resource implications and has no objections. The resources to conduct this rulemaking effort and development of guidance (approximately 1 FTE spread over a 2 year period) are within the current budget.

The Office of the Chief Information Officer has reviewed the rulemaking plan for information technology and information management implications and concurs in it.

**RECOMMENDATION:**

We recommend that the Commission approve our plan to proceed with the Part 50 rulemaking. We request that you act within 10 days. We will take no further action until the SRM is issued. We consider this action to be within the delegated authority of the Executive Director for Operations.

William D. Travers  
Executive Director  
for Operations

Attachment: As stated

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*RAW changed as noted 9/13/99*

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## Rulemaking Plan

### 10 CFR Part 50

#### Regulatory Issue:

The staff believes that we need to initiate a rulemaking to require that decommissioning trust agreements are in a form acceptable to the NRC in order to increase assurance that decommissioning funds will be available for their intended purpose. In SECY-99-170 (July 1, 1999), "Summary of Decommissioning Fund Status Reports," the staff noted that we intend to continue to review decommissioning trust agreements in license transfers on a case-by-case basis and impose appropriate conditions in the orders approving the transfer. However, the staff believes that efficiency would be increased if the NRC codified this practice generically in the regulations. Also, based on our experience with approving the transfers of the operating licenses of the Three Mile Island Unit 1 and Pilgrim nuclear power stations, we believe this rulemaking would expedite similar transfers in the future by providing regulatory predictability.

in adequate amount of

#### Existing Regulatory Framework:

Until recently, rate regulators exercised direct oversight of the terms and conditions of the decommissioning trusts, and NRC involvement was not necessary. Because this oversight may cease with deregulation, we believe the NRC needs to take a more active oversight role. Section 10 CFR 50.75 allows external decommissioning trusts as one of the acceptable financial assurance methods. However, although we included sample language for decommissioning trust agreements in guidance issued in August 1990 (Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors"), the NRC's regulations do not require that specific terms and conditions be included in the decommissioning trust agreements. As an accompaniment to the rulemaking, we intend to update Regulatory Guide 1.159.

#### How the Regulatory Problem Will Be Addressed by Rulemaking:

The staff believes this rulemaking would be consistent with the NRC's "four pillars of regulation." First, in those cases where rate regulators' oversight of decommissioning trust agreements would cease because of deregulation, this action would maintain the public health and safety by giving NRC the enhanced ability to provide the needed decommissioning trust oversight. Second, by codifying requirements that decommissioning trust agreements must meet specific terms and conditions, public confidence would increase because of increased predictability, consistency, objectivity, and scrutability of the oversight process. Third, this action would improve effectiveness and efficiency of the NRC oversight process because we would not need to continue the current practice of addressing provisions of decommissioning trusts on a case-by-case basis, and imposing appropriate conditions in the orders approving the transfers. Fourth, this action will reduce unnecessary regulatory burden on licensees as they will be able to use a standard approach in developing their decommissioning trust agreements.

ATTACHMENT

Rulemaking Options:

The staff has identified two rulemaking options. <sup>Option 1 ✓</sup> (First) is for the staff to develop a rulemaking that would require explicitly, in 10 CFR 50.75, that decommissioning trust agreements address specific terms and conditions acceptable to the NRC. Concurrently, we would revise Regulatory Guide 1.159 to incorporate the terms and conditions that we believe are necessary to fully protect the funds in the decommissioning trusts for their intended purpose. ~~A second option~~ is for the staff to incorporate specific trust fund language directly in the regulations. ✓

Alternatives:

~~The no-action alternative also exists. In that case, we would continue our present way of operation, by conducting the review of decommissioning trust agreements in license transfers on a case-by-case basis, and imposing appropriate conditions in the orders approving the transfers.~~ ✓

Impact(s) on Licensees:

<sup>either rulemaking option ✓</sup> We estimate that this rule would require about 8 hours of burden for each licensee to prepare an initial review of its trust agreement to assure the agreement's consistency with the proposed rule and its guidance. Therefore, we believe there is no significant impact on licensees as a result of either of the rulemaking options. With respect to our proposed oversight activities, a licensee would have to execute a decommissioning trust regardless of whether it was to be reported to a rate regulator. Also, with respect to license transfers, we would impose appropriate conditions in the orders approving the transfers, whether the licensee is required to do it because of a regulation or because we require it on a case-by-case basis.

Benefits:

The greatest benefit of this rule is the increased assurance that decommissioning funds will be available for their intended purpose. Further, by addressing this issue generically through rulemaking, rather than continuing the current case-by-case approach, the overall impact on resources will reduce staff time expended on this issue. Another benefit is increased predictability in the regulatory structure for license transfers.

Office of the General Counsel (OGC) Legal Analysis:

OGC does not expect to raise any legal objections to this rulemaking effort.

Category of Rule:

This rulemaking is a codification of regulatory practice. It will not be a major rule.

Backfit Analysis:

We have determined that the proposed amendments to 10 CFR Part 50 would not involve any provisions which would involve backfits as defined in 10 CFR 50.109(a)(1). This rulemaking effort will not impose any new requirements on licensees. As we stated above, it is merely a

codification of regulatory practice and at most this action is a revision to reporting requirements; therefore, it does not constitute a backfit as defined in Section 50.109(a)(1).

Supporting Documents Needed:

Concurrent with the issuance of this rule, we intend to revise Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Power Reactors," to incorporate the terms and conditions that we believe are necessary to fully protect the funds in the decommissioning trusts for their intended purpose.

Issuance by Executive Director for Operations or Commission:

We believe the Commission will issue this rule.

Interoffice Management Steering Group:

No interoffice management group is necessary for this rulemaking.

Public/Industry Participation:

We do not anticipate any significant public or industry interest on this rulemaking.

Resources:

NRR Lead: Brian J. Richter, Senior Cost Analyst  
Generic Issues, Environmental, Financial and Rulemaking Branch  
Division of Regulatory Improvement Programs

OGC Contact: Susan L. Uttal, Senior Attorney

Technical Contact: Robert S. Wood, Senior Licensee Financial Policy Advisor  
Generic Issues, Environmental, Financial and Rulemaking Branch  
Division of Regulatory Improvement Programs, NRR

Schedule:

Proposed Rule and Regulatory Guide to EDO 12 months after rulemaking plan is approved

Final Rule and Regulatory Guide to EDO 24 months after rulemaking plan is approved