NUCLEAR ENERGY INSTITUTE

(10)

DOCKETED
USNRC

'01 AUG 14 A10:13

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

DOCKET NUMBER
PROPOSED RULE PR 50.
(66FR29244)

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August 13, 2001

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

ATTENTION: Rulemakings and Adjudications Staff

SUBJECT: Nuclear Energy Institute's Comments on NRC's Proposed Rule on Decommissioning Trust Provisions and Draft Regulatory Guide DG-1106

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI),[1/] on behalf of the nuclear energy industry, submits these comments in response to the NRC's request for public comments on its Proposed Rule on Decommissioning Trust Provisions (66 FR 29244, May 30, 2001) and Draft Regulatory Guide DG-1106 (Proposed Revision 1 of Regulatory Guide 1.159), "Assuring the Availability of Funds for Decommissioning Nuclear Reactors."

1/ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI members include all companies 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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We are commenting on both the Proposed Rule and DG-1106 together. These two draft documents are inter-related, and must be reconciled with one another. We believe that there are certain inconsistencies between NRC's guidance and both the current and proposed decommissioning funding rules in 10 CFR 50.75. We also believe that the clarity of both the rules and guidance could be improved. We therefore have included specific suggestions to improve both the Proposed Rule and DG-1106.

In addition, we believe that NRC's rules and guidance should not create any potentially inconsistent "dual regulation" of nuclear decommissioning trust funds (NDTs), by imposing NRC requirements that overlap requirements that are currently imposed by state public utility commissions (PUCs) and/or the Federal Energy Regulatory Commission (FERC). Moreover, in circumstances where it is necessary for NRC to provide more detailed oversight of any NDTs that are not subject to PUC or FERC oversight, NRC should not establish its own investment standard, but rather should adopt the "prudent investor" standard already promulgated by FERC, because that standard is both fully adequate and well-understood. We have a specific suggestion for implementing this proposed approach.

I. INTRODUCTION

The industry shares the Commission's interest in assuring that adequate funds are set aside and properly maintained to assure the availability of funds for the decommissioning of nuclear power reactors. We agree that amendments to the existing regulations further these goals. In addition, we agree that NRC's proposed approach—adopting standard rules to apply to all licensees regarding decommissioning trust funds—is superior to NRC's practice over the last several years of applying specific license conditions on a case-by-case basis in connection with individual license transfers.

It is, however, imperative that NRC avoid the possibility of dual regulation of NDTs. In particular, we are concerned that NRC proposes to apply investment standards that are potentially inconsistent with current requirements imposed on some licensees by state PUCs and/or FERC. We are also concerned that NRC's proposed rule is not in all cases identical to specific license conditions that already have been imposed on some licensees by the NRC. These licensees should be permitted to amend their licenses to remove specific decommissioning trust agreement conditions once NRC's proposed rule is adopted, and a generic finding of no significant hazards consideration would facilitate the processing of such amendments.

Our comments on the Proposed Rule fall within the following four categories:

1. Dual regulation regarding investment standard
2. Removal of specific license conditions
3. Revisions to proposed rule to reconcile NRC positions reflected in guidance
4. Miscellaneous suggested improvements to proposed rule

Our comments on DG-1106 fall within the following three categories:

1. Need for guidance regarding insurance and long-term contracts
2. Suggested improvements to Sections 1.1, 1.3 & 2.2
3. Suggested improvements to Appendix B-3 "Sample Trust Fund"

II. DISCUSSION

A. COMMENTS ON PROPOSED RULE

1. Dual Regulation Regarding Investment Standards

NRC's Proposed Rule at 10 CFR 50.75(h)(1) provides subsections as follows:

> (i) The trustee, manager, investment advisor, or other person directing investment of the funds:
>
> . . .
>
> (B) Is obligated to ensure that all investments are rated at least ``investment grade" or equivalent;
> (C) Is obligated at all times to adhere to a prudent investor standard in investing the funds; and

These provisions should be amended to read as follows:

> (i) The trustee, manager, investment advisor, or other person directing investment of the funds:
>
> . . . .
>
> ~~(B) Is obligated to ensure that all investments are rated at least ``investment grade" or equivalent;~~
> ~~(C)~~ (B) Is obligated at all times to adhere to a standard of care set forth in the trust, which either shall be the standard of care, whether in

> investing or otherwise, required by state or federal law or one or more state or federal regulatory agencies with jurisdiction over the trust funds, or, in the absence of any such other statutory or regulatory requirement, shall be the standard of care, whether in investing or otherwise, that a prudent investor would use in the same circumstances. The term "prudent investor" shall have the same meaning as set forth in the Federal Energy Regulatory Commission's "Regulations Governing Nuclear Plant Decommissioning Trust Funds" at 18 CFR 35.32(a)(3), or any successor regulation thereto. ~~a prudent investor standard in investing the funds; and~~

The Proposed Rule sets forth two investment standards to be imposed on all NDTs: (1) "investment grade" rating for investments; and (2) the "prudent investor" standard. The "investment grade" standard is not a standard that is commonly used or applied in the investment management community. In addition, it easily could be construed in ways that would be inconsistent with the "prudent investor" standard. Therefore, it should be deleted. Instead, NRC should use the same "prudent investor" standard imposed by FERC's regulations.

Further, the Proposed Rule should not apply an NRC standard on all licensees, without regard to whether or not any individual licensee's NDTs are already subject to investment standards and ongoing oversight by one or more state PUCs and/or FERC. The NRC should avoid "dual regulation" of trust funds and, instead, continue to defer to any such state PUC or FERC standards.

Moreover, the Proposed Rule fails to recognize that the proposed NRC standards may be inconsistent with standards imposed by state PUCs and/or FERC. This could place licensees at risk of being accused of violating one standard or the other. For example, when it considered this issue, the Public Utility Commission of Texas declined to simply adopt the FERC "prudent investor" standard, but instead, it adopted its own standards for decommissioning trust fund investments set forth in PUC Substantive Rule 25.301 (16 Tex. Admin. Code 25.301). In setting forth investment goals for Texas NDTs, the rule states that "[t]he utility may apply additional prudent investment goals to the funds," but only "so long as they are not inconsistent with the stated goals of this subsection." *See* Rule 25.301(c)(1). Even though the electric utility industry in Texas is undergoing restructuring, the Texas PUC rules continue to apply to the NDTs associated with plants in Texas. Similarly, the restructuring in California did not affect the continuing jurisdiction of the California PUC over NDTs for nuclear units in California.

The NRC has a legitimate interest in assuring that an appropriate and enforceable investment standard is imposed on all decommissioning trust funds. However, these standards have historically been imposed by state PUCs and FERC. NRC has properly deferred to these rate-setting agencies to provide oversight for NDTs, and it should continue to do so. A better approach to the Proposed Rule is already articulated in Sections 2.2.3.4 and 2.2.3.5 of the NRC proposed guidance in DG-1106. There, the NRC Staff suggests that "[i]nvestments selected with the approval of or guidance from the State PUC with jurisdiction over the licensee or from FERC would be acceptable to the NRC staff," but "[l]icensees that are not subject to PUC or FERC jurisdiction" would be subject to an NRC-imposed investment standard. This approach avoids the risk of dual, inconsistent regulation of NDT investment standards.

We agree with the "either, or" approach set forth in Sections 2.2.3.4 and 2.2.3.5 of DG-1106. However, we disagree with NRC's "investment-grade" standard set forth in Section 2.2.3.5, as well as the proposed 10 CFR 50.75(h)(1)(i)(B), requiring that "all investments are rated at least 'investment grade' or equivalent." The term "investment grade" has no commonly understood meaning, in the context of the diversified portfolios of stocks, bonds and other investments in which nuclear decommissioning trust funds are typically invested. NRC's own guidance in NUREG-1577, Rev. 1, Section III.2.d.(1)(b), "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" ("SRP"), implicitly recognizes that the term "rated at least investment-grade" has no relevance in the context of investments in common stocks. In interpreting this requirement, the SRP says that "[c]ommon stocks are not rated" and suggests that "speculative" common stock issues should be avoided. It then concedes that "there is no simple way to determine whether a stock issue is speculative." To date, NRC's guidance has not posed any problems for licensees, trustees, and investment managers because the NRC has deferred to state PUC and FERC oversight. Thus, licensees, trustees, and investment managers have never had to formally implement differing NRC guidance. The Proposed Rule would require licensees to implement this unclear standard as an NRC regulatory requirement.

The proposed "investment grade" rating standard, if properly understood, may be contrary to prudent , accepted portfolio management and could adversely impact optimum funding of decommissioning trusts for nuclear units. Investment portfolio construction, as typically performed by institutional investors, including most corporate fiduciaries, is founded on the principle of modern portfolio theory. Under this theory, investment decisions regarding individual investments are evaluated

not in isolation but in the context of the entire trust portfolio and the overall investment strategy. Diversification is fundamental to risk management and is required of a fiduciary. Risk and return are integrally related and investment decisions must be made considering the level of risk appropriate for the objectives of the portfolio. Diversification involves accumulating securities in different types of industries, risk categories, and companies in order to manage the level of risk. It has been demonstrated extensively, in theory as well as empirically, that the overall risk of a portfolio for a given level of return can be reduced by adding non-correlated assets, including assets of both higher and lower relative risk. For this reason, it is standard practice for institutional portfolios to maintain individual investments in a variety of asset categories including high-yield debt, international funds, market-neutral funds, real estate, large and small capitalization stocks, and other categories that, in isolation, might carry too much risk. Over-concentration in any particular category could well involve undue risk. However, with prudent allocation in the context of a total portfolio, risk is reduced for any given level of anticipated return.

FERC recognized the benefits of the more fluid modern portfolio theory in 1995 in adopting its present investment standard and in specifically rejecting a standard arguably similar to that now proposed by the NRC. The preamble to the FERC final rule provides, in part, as follows:

> We agree with the majority of commenters that . . . a reasonable person standard with certain restrictions on the quality and quantity of Fund investments, unduly restricts flexibility. As Northeast Utilities points out, there is no single set of investment limitations that will adequately take into account the factors affecting decommissioning of each nuclear generating plant. A Fund manager must have sufficient leeway to address a Fund's needs under a variety of circumstances and to balance Fund security while obtaining a maximum possible return under the circumstances . . . . [Also,] we agree that it is possible to protect the integrity of an investment portfolio as a whole by investing in various classes of assets with offsetting risks. This strategy will allow investment managers to adjust quickly to financial and market conditions and should, over time, produce higher returns than Black Lung investments and lower the amount of ratepayer funds necessary for decommissioning.

60 FR 34109, 34121-22 (June 30, 1995), Docket No. RM94-14-000, Order No. 580; CCH Federal Energy Guidelines, 31,023 at pp. 31, 368-69.

The commentary by FERC is consistent with the prudent investor rule promulgated by the American Law Institute in the Third Restatement of Trust, which recognized that "speculative" investments are permissible when used either to reduce overall risk or to allow a trust to achieve a higher return expectation without a disproportionate increase in the risk of the portfolio. An investment is not *per se* prudent or imprudent, but the level of risk is judged by the investment's projected effect on the overall portfolio. The principles of the Prudent Investor Rule as anticipated in the Restatement of Trusts (Third) are reflected in the Uniform Prudent Investor Act as adopted by the National Conference of Commissioners on Uniform State Laws in 1994.

Moreover, the restrictions proposed by the NRC could well have the unintended effect of increasing relative overall risk while reducing expected return. For example, if only investment-grade fixed income instruments were permitted, the inflation risk would be increased and would likely be unacceptable. Furthermore, it is most likely that the prices of such investments would tend to move in direct correlation with one another, up or down, exposing the fund to undue interest-rate risk. Increasing the allocation to equities would tend to mitigate the swings, but is not likely to eliminate them because there is a degree of positive correlation between investment-grade debt and equity. To prudently seek to control overall relative risk for any given level of anticipated return, greater diversification into non-perfectly correlated asset classes becomes more necessary when one allocates between investment-grade debt and equity instruments.

The reasonable investor or "prudent investor" standard adopted by FERC is the common standard applicable to fiduciaries and is well-understood by the investment community. The arguably more restrictive standard proposed by the NRC relative to the FERC standard introduces uncertainty and results in a dichotomy in the investment parameters applicable to the investment of decommissioning trust funds. There is simply no need for NRC to articulate a new investment standard for NDTs. The FERC "prudent investor" has become a *de facto* national standard, despite the fact that some states continue to utilize their own similar standards.

To the extent that there is a need for NRC to fill any gaps in state PUC and/or FERC oversight of NDTs, NRC should simply adopt and enforce the FERC "prudent investor" standard. NRC enforcement would be facilitated by the fact that licensees, trustees, and investment managers are already familiar with this standard. Moreover, the imposition of this standard by NRC would not result in any negative impact with respect to the management of NDTs. In contrast, even if

NRC developed further guidance regarding the "investment grade" standard, licensees, trustees, and investment managers would likely need to develop new investment procedures and rules to implement this standard. Such a use of NRC and industry resources is unnecessarily wasteful, given that there is no evidence, or even any suggestion, that the existing FERC "prudent investor" standard is in any way inadequate.

Finally, the Proposed Rule suggests that the NRC is reluctant to adopt the FERC investment standard because NRC would then need to track how that standard is being interpreted in practice. See 66 FR at 29246. The importance of total portfolio investment management, in light of the significant level of funding for all U.S. nuclear plants, far outweighs any administrative burden that might accompany the NRC's adoption of the FERC investment standard.

2. Removal of Specific License Conditions

We recommend that NRC add the following to the Proposed Rule as 10 CFR 50.75(h)(3):

> (3) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves "no significant hazards consideration."

We agree that the Proposed Rule articulates a set of essential terms and conditions governing NDTs, and that these terms and conditions provide for adequate assurance for decommissioning funding. This standardized approach is superior to the current NRC practice of applying NDT agreement license conditions on a case-by-case basis in connection with the approval of individual license transfers. In many respects, the NRC's Proposed Rule provides for essential terms and conditions that are substantially the same as those imposed under prior license conditions. However, in some respects, the precise terms of the Proposed Rule are different from the specific conditions imposed on some individual licenses. For example, the Proposed Rule requires in 10 CFR 50.75(h)(1)(ii) that trust agreements for NDTs "may not be amended in any material respect without written notification to the Director, Office of Nuclear Reactor Regulation . . . at least 30-days prior to the proposed effective date of the amendment." However, the specific license conditions for Clinton Power Station and Three Mile Island, Unit 1, require that the trust agreements for these plants include provisions to assure that the "written consent"

of the Director, NRR, is obtained prior to any material amendments to these trusts. Licensees should be provided relief from any conflicts or inconsistencies between the final rule and specific license conditions.

The regulatory requirements imposed by the Proposed Rule are an effective substitute for any existing decommissioning trust agreement conditions in current licenses. Therefore, Licensees that currently have separate license conditions in this area should have the option to amend their licenses to remove those conditions. A generic finding of no significant hazards consideration would facilitate the review and approval of such administrative amendments.

3. Revisions to Proposed Rule to Reconcile NRC Positions Reflected in Guidance

a. Reconciliation of 30 Day Notice for Disbursements With DG-1106

The following language should be added at the beginning of 10 CFR 50.75(h)(1)(iii):

> Except for withdrawals being made pursuant to 10 CFR 50.82(a)(8), ~~N~~no disbursement or payment may be made . . .

In the proposed 10 CFR 50.75(h)(1)(iii), the NRC would impose a requirement that 30 days advance written notice be provided to the Director, NRR, prior to disbursements or payments from the NDT. However, in the proposed DG-1106, the NRC Staff recognizes that this notice requirement should not apply to plants expending funds during decommissioning pursuant to the license termination rules in 10 CFR 50.82. In Section 2.2.2.4, DG-1106 states that "[a]fter decommissioning has begun and withdrawals from the decommissioning fund are being made pursuant to 10 CFR 50.82(a)(8)(i), no further notification need be made to the NRC." As written, the rule does not provide for this exception. We believe that the rule should be amended to follow the approach suggested in the guidance. We also believe that the exception from notice requirements articulated in the guidance should not be limited to 10 CFR 50.82(a)(8)(i), but also should include other expenditures explicitly approved under 10 CFR 50.82(a)(8), such as expenditures for planning activities within the 3 percent rule provided for in 10 CFR 50.82(a)(8)(ii).

b. Clarification Regarding Credit for Projected Earnings

As proposed, both 10 CFR 50.75(e)(1)(i) & (ii) continue to provide as follows:

> 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.

(Emphasis added). This language in both subsections should be revised, as follows:

> 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, if the licensee's rate-setting authority does not authorize the use of another rate. This includes the periods of safe storage, final dismantlement, and license termination, for licensees using a site specific cost estimate submitted for NRC review that specifically takes into account these periods and their cost implications for total decommissioning cost. For licensees using the minimum amount calculated pursuant to 10 CFR 50.75(c), the real rate of return credit must be limited to the projected decommissioning period, which may not exceed ten years.~~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.

In Section 2.2.8 of the proposed guidance (DG-1106), the NRC staff explains its position that in order to take credit for NDT earnings during periods of safe storage, final dismantlement, and license termination, a licensee must be within 5 years of the projected end of operations and must use a site-specific cost estimate, submitted for NRC review, that takes into account the costs associated with these periods. In contrast, the rule can readily be interpreted to permit earnings to be credited through these periods when using the NRC "formula amount" pursuant to 10 CFR 50.75(c), rather than a site-specific estimate.

NRC's guidance imposes limitations that do not appear in the plain language of the rule. In effect, the NRC is creating a requirement, through use of its guidance, that is not clearly directed by the rule itself. Either licensees should be permitted to take credit for earnings during "periods of safe storage, final dismantlement, and

license termination" under all circumstances, as the plain language of the current rule suggests, or the final rule should clearly reflect the circumstances under which licensees will be permitted to do so.

All licensees should be permitted to take credit for earnings during the safe storage period, if such credit is supported by a site-specific cost estimate that takes into account withdrawals for expenses during the safe storage period. In addition, the rule should clarify the ability of licensees to take credit for earnings "during the decommissioning period," as currently provided in the NRC's rule. The NRC formula amount for minimum levels of decommissioning funding assurance is based upon a DECON assumption, which will involve a several year decommissioning period during which trust funds will continue to have earnings that will exceed the rate of inflation. This is particularly true, because many contracts will be entered into early in the decommissioning process, reducing the inflation risk. Licensees should therefore be permitted to take credit for earnings during an appropriate decommissioning period not to exceed ten years. Obviously, in calculating the earnings credit, licensees would need to account for withdrawals during the decommissioning period.

4. Miscellaneous Suggested Improvements to Proposed Rule

a. Clarification Regarding Non-Nuclear Sector Collective or Commingled Funds and Pre-Existing Investments

The proposed 10 CFR 50.75(h)(1)(i)(A) would prohibit investments in any companies that own or operate nuclear power plants, with certain exceptions, as follows:

> (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;

This subsection should be revised to clarify that investments in non-nuclear sector collective or commingled funds, such as "common trust funds," are permitted:

> (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 other non-nuclear sector collective, commingled or mutual funds; provided, however, that this subsection shall not operate in such a way as to require the sale, transfer or other disposition of any such prohibited investment that was made prior to the effective date of this rule.

Many NDTs hold substantial investments in "common trust funds" which are collective or commingled funds that are like mutual funds, but are not open to investment by the general public and are not classified as mutual funds. Typically, such funds are maintained for purposes of pooled investment by trusts that have mutually consistent, long-term investment goals and needs. They are therefore advantageous as trust investments because they are not subject to the higher levels of account turnover (with resulting fees and capital gains taxation) that mutual funds can experience. Because such funds are functionally very similar to mutual funds, investments in collective or commingled funds should be subject to the same exception that applies to mutual funds.

There could be adverse financial implications for many NDTs if NRC were to conclude that investments in non-nuclear sector collective and commingled funds are not subject to the exception from investments in companies owning or operating nuclear power plants. Either NDTs would need to divest their current substantial investments in collective or commingled funds, such as common trust funds, or the funds would need to divest the prohibited investments. (The former may be the only option, if the managers of such funds are unwilling to divest the prohibited investments because of the adverse tax and other implications for their non-NDT trust clients that invest in the same funds). In either case, such action by the NRC could have substantial adverse tax and other consequences on NDTs. We therefore urge the NRC to confirm that investments in collective or commingled funds are subject to the same exception as mutual funds.

The proposed "proviso" would "grandfather" existing investments. This is required because some existing NDTs may hold direct investments that would be prohibited by the proposed rule, even though such investments may have been acquired pursuant to investment guidance approved by a state PUC prior to any such NRC

prohibition having been promulgated. The NRC's rule should not be interpreted in any way to require that licensees dispose of these investments, because such action could generate unwelcome capital gains taxes and other expenses with adverse financial consequences that are inconsistent with previously approved investment strategies. This would diminish the corpus of the current trust—a result that conflicts with NRC's stated goals in the proposed rulemaking.

Finally, we recommend that NRC provide in its guidance a list of the public and private companies that own or operate power reactors within the meaning of this rule.

b. Re-Phrase the Limitation on Licensee Involvement in Investment Decisions

The proposed language in 10 CFR 50.75(h)(1)(i)(D) provides as follows:

> (i) The trustee, manager, investment advisor, or other person directing investment of the funds:
>
> . . . .
>
> (D) Is prohibited from engaging the licensee or its affiliates or subsidiaries as investment manager for the funds or from accepting day-to-day management direction of the funds' investments or direction on individual investments by the funds from the licensee or its affiliates or subsidiaries.

The language of the proposed 10 CFR 50.75(h)(1)(i)(D) should be set out as a separate requirement, 10 CFR 50.75(h)(1)(ii), with the other subparts of 50.75(h)(1) renumbered accordingly, as follows:

> ~~(D~~ii) ~~Is prohibited from engaging t~~The licensee~~,~~ ~~or~~ its affiliates, and its ~~or~~ subsidiaries are prohibited from being engaged as investment manager for the funds or from ~~accepting~~ giving day-to-day management direction of the funds' investments or direction on individual investments by the funds ~~from the licensee or its affiliates or subsidiaries~~.

As currently phrased, this requirement would provide that trust agreements place limitations on the ability of the "trustee, manager, investment advisor or other person" to engage the licensee or one of its affiliates as an investment manager. However, it is common that the licensee itself is the entity that engages the investment manager. Therefore, it would seem more appropriate to restrict

licensees from engaging in this type of activity, rather than trustees and others who would not ordinarily engage in this type of activity.

c. Clarification Regarding Administrative Expenses

The proposed 10 CFR 50.75(h)(1)(iii) provides an exception from the 30-day advance notice requirement for routine payments for administrative expenses. We agree with this approach, which is consistent with the limitation on the use of NDT funds imposed upon "qualified" NDTs pursuant to Section 468A(e)(4) of the Internal Revenue Code (IRC). However, in order to make clear that NRC's use of the term "ordinary administrative expenses" is consistent with the IRC, the NRC should substitute instead the language from Section 468A(e)(4)(B) of the IRC, in each place where this term appears, as follows:

> administrative costs (including taxes) and other incidental expenses of the [f]und (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the [f]und

d. Clarification Regarding License Transfers

The proposed 10 CFR 50.75(h)(1)(iii) provides that funds from NDTs may be "transfer[red] to another financial assurance method acceptable under paragraph (e) of this section." Obviously, where the NRC approves a transfer of an NRC license for all or part of an ownership interest in a nuclear power reactor pursuant to 10 CFR 50.80, NRC typically would require the transfer of the associated NDTs. The language of 10 CFR 50.75(h)(1)(iii) should be revised to clarify that this is an acceptable use of the funds, as follows:

> . . . transfer to another financial assurance method acceptable under paragraph (e) of this section, including a transfer to another external trust, such as in connection with an NRC-approved license transfer, . . .
> . .

e. Clarification Regarding Use of Funds for Spent fuel Management and Non-Radiological Decommissioning

The proposed 10 CFR 50.75(h)(1)(iii) provides limitations on the use of trust funds in a way that fails to acknowledge the possible accumulation of trust funds for purposes of funding spent fuel management and non-radiological decommissioning

costs. Therefore, the following sentence should be added at the end of 10 CFR 50.75(h)(1)(iii):

> Notwithstanding the foregoing, disbursements or payments from the trust may be made for purposes of management of irradiated fuel, either pursuant to a program which is the subject of written notification to NRC pursuant to 10 CFR 50.54(bb), or pursuant to other written notification to NRC, and may be made for purposes of non-radiological decommissioning after having first given thirty days prior written notice to the Director, Office of Nuclear Reactor Regulation, of the licensee's intent to begin expending funds for such purposes.

Accumulation of funds for spent fuel management should be encouraged by the NRC, and accumulation of such funds or funds for non-radiological decommissioning may be encouraged and/or required by other regulators such as state PUCs. In addition, accumulation of commingled funds for these purposes may be economically desirable, because of the tax advantages of depositing funds in a tax "qualified" trust fund pursuant to section 468A of the IRC. Given the desirability of any such accumulation of funds for these purposes, as well as the potential need for commingling these funds with radiological, decommissioning funds, NRC should explicitly permit the use of funds for such purposes.

f. Implementation Period

The proposed rule will require a large number of licensees to amend their existing nuclear decommissioning trust agreements. This will require a considerable effort and period of time, particularly because a small number of trustees act as the trustee for a large number of licensees and their respective trusts. Therefore, the final rule should provide for an implementation period of not less than one year. This can be accomplished by providing that the final rule will become effective one year after publication in the Federal Register.

g. Grandfather Clause for Plants With Approved Decommissioning Funding Plans

NRC should add the following as 10 CFR 50.75(h)(4):

> The provisions of this subsection (h) shall not apply to any plant with an NRC-approved decommissioning funding plan on the effective date of this rule.

The proposed rule is unnecessary for any plant that is currently subject to an NRC-approved decommissioning funding plan, which would already include a review of existing investment restrictions and oversight of the trust funds by other regulators. There is no basis for imposing any new requirements on such licensees. Doing so would only serve to impose unnecessary burden and expense on such licensees, without any benefit.

h. Alternatives For Achieving Rule Compliance

The proposed 10 CFR 50.75(h)(1) provides as follows:

> (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—

This language should be revised to provide as follows:

> (h)(1) Licensees using prepayment or an external sinking fund to provide financial assurance shall provide in the terms of, investment guidelines for, or other binding arrangements governing, the trust, escrow account, government fund, or other account used to segregate and manage the funds that—

The NRC's requirements can be implemented by amending the terms of each relevant trust agreement, and many licensees may choose to do so in this way. However, there are a variety of other ways to achieve compliance with the NRC's proposed rule that are equally as binding as the terms of the underlying trust agreement. For example, a licensee's written investment guidelines may well be the most logical vehicle for directing that an investment manager must meet certain standards or for prohibiting direct investments in the common stock of companies that own one or more nuclear power reactors. Alternatively, a licensee's trust agreement might already be fully in compliance with all of the new NRC requirements, except for just one provision such as the requirement for notice to NRC prior to any amendment of the agreement. Such a licensee might choose to enter into a letter

agreement with the trustee to implement its compliance with that requirement, and thereby avoid the need to amend the trust agreement itself.

B. COMMENTS REGARDING DG-1106

1. Need for Guidance Regarding Insurance and Long Term Contracts

DG-1106 provides certain minimal guidance regarding the various methods available for providing financial assurance for decommissioning, but does not provide any guidance regarding the insurance method, as provided for in 10 CFR 50.75(e)(1)(iii), or the use of long term contracts, as provided for in 10 CFR 50.75(e)(1)(v). While we recognize that neither of these methods is currently in any widespread use, it would be useful for NRC to establish some general guidance regarding these methods. Suggested guidance follows:

- **Insurance** – Insurance must be in the form of a policy reviewed and accepted by the NRC Staff. Insurance could be for a term that is less than the life of the unit, provided, however, that such insurance is used in combination with another acceptable financial assurance mechanism or otherwise provides a mechanism by which another acceptable method of decommissioning funding assurance would replace the insurance. For example, insurance could be used in combination with an external sinking fund which might become fully funded and replace the insurance upon the expiration of the term of the insurance.

- **Long Term Contracts** – One or more long term contracts with a third party, including an affiliate of the licensee, may be used, provided such contract(s) includes an obligation to pay the applicable total proportionate share of uncollected funds estimated to be needed for decommissioning, notwithstanding the operational status either of the licensed power reactor to which the contract(s) pertains or force majeure provisions. In reviewing any such contract, NRC will assess the financial qualifications of the third party to meet its obligations. A third party will be deemed to be financially qualified, if (a) the charges under the contract will be collected from ratepayers pursuant to traditional "cost of service" ratemaking; (b) the contracting party has an investment-grade bond rating such as a rating of "BBB" by Moody's or an equivalent rating by another bond rating agency (Standard and Poors and

Fitch IBCA, Duff and Phelps are two examples of other major rating agencies), (c) the contracting party would otherwise meet the standards for providing a parent company guarantee; or (d) a review of the contracting party's five year *pro forma* projections of expected financial performance, or its prior three years annual financial statements, and/or other information provided, are sufficient for the NRC to conclude that there is reasonable assurance that the decommissioning funding obligation will be met, after having taken into account the totality of the circumstances, including the decommissioning liability being assumed and the relative value of the assets and revenues of the contracting party. Long term contracts could be for a term that is less than the life of the unit, provided, however, that such contracts are used in combination with another acceptable financial assurance mechanism or otherwise provides a mechanism by which another acceptable method of decommissioning funding assurance would replace the funding provided for in the contract. For example, a long term contract could be used in combination with an external sinking fund which might become fully funded and replace the contract upon the expiration of the term of the contract.

2. Suggested Improvements to Sections 1.1, 1.3 & 2.2

The following are suggested improvements to DG-1106, primarily to conform the guidance to suggestions noted above with respect to the Proposed Rule, but also for other reasons noted below.

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. For reactors that are not covered by 10 CFR 50.75(c), the initial certification amount must be based upon a site-specific decommissioning cost estimate submitted to and reviewed by the NRC.

> At its discretion, a power reactor licensee may submit a certification based either on the formulas provided in 10 CFR 50.75(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. For reactors that are not covered by 10 CFR 50.75(c), no exemption is required, so long as the certification amount is based upon an acceptable site-specific decommissioning cost estimate.

These additions are suggested to clarify NRC's guidance for applying the existing rules to potential new reactor designs that are not covered by the current formula amount in 10 CFR 50.75(c).

1.3 Decommissioning Cost Estimate

Five decommissioning cost estimates are required to be developed and submitted for NRC review:

• An initial estimate is required that may be calculated according to 10 CFR 50.75(c) or the estimate may be site-specific and at least equal to the decommissioning cost from 10 CFR 50.75(c). For reactors that are not covered by 10 CFR 50.75(c), the initial certification amount must be based upon a site specific decommissioning cost estimate submitted to and reviewed by the NRC.

. . . .

In general, decommissioning cost estimates are provided by major activity and major decommissioning phase or time period. The cost estimate must account for the entire decommissioning work scope., ~~but not~~ It need not, but may, account for items that are outside

> the scope of the decommissioning process, such as the maintenance and storage of spent fuel in the spent fuel pool, the design or construction of spent fuel dry storage facilities, or other activities 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.

The first addition is suggested for the same reasons discussed immediately above with regard to Section 1.1 of DG-11106. The second change is suggested to clarify that licensees may provide for the funding of spent fuel management and non-radiological decommissioning costs, as discussed above in Section II.A.4.e.

The reference to "Regulatory Position 1.5" in Section 2.1.5 should be "Regulatory Position 1.4."

> 2.2.2.1. The trust agreement should state the purpose of the trust and the nuclear facility must be identified by name and unit number, license number, or NRC docket number. An acceptable statement of purpose is the statement required for a trust agreement to qualify as a Nuclear Decommissioning Reserve Fund under Section 468A of the Internal Revenue Code. To qualify under Section 468A, the trust agreement should state that the trust is established for the exclusive purpose of providing funds for the decommissioning of one or more nuclear plants.

We agree that the nuclear facility should be adequately identified. However, it is possible to adequately identify a plant by name and unit number, without specifying the exact license number or docket number. There are existing NDT agreements that identify nuclear facilities without identifying a license number and NRC docket number, and it is likely that some of these NDT agreements would not otherwise require amendment to conform with the NRC's Proposed Rule. This minor adjustment to the guidance does not diminish the protection sought but will reduce the burden of NDT agreement amendments necessary to conform to the new NRC rule and guidance.

> 2.2.2.2. The trust agreement should specify that the trust fund is established for the benefit of the licensee of the facility and/or the NRC. More than one licensee may be identified. ~~Under Section 468A~~

> ~~a~~A single trust agreement may establish two or more Nuclear Decommissioning Funds when a nuclear power plant is owned by two or more licensees or when a licensee owns multiple licensed facilities. Similarly, a trust agreement may contain both qualified and non-qualified decommissioning funds.

The reference to 468A should be stricken as unnecessary. The addition is suggested, because there are existing NDT agreements that govern multiple trusts for multiple licensed facilities. Such agreements represent an efficient "best practice" that assures consistency among NDTs maintained by a licensee, reduces the administrative burden of maintaining and/or amending the agreements, and reduces the burden on the NRC related to the review of agreements and enforcement of NRC requirements. This modification to NRC's guidance makes clear that an existing and desirable practice is acceptable to the NRC.

> 2.2.2.4. The trust agreement should specify the circumstances under which payments will be made from the trust. It must provide that no disbursements or payments may be made from the trust by the trustee, other than for payment of ordinary administrative expenses (examples of ordinary administrative expenses are set out in the Internal Revenue Code Section 468A), until the trustee has first given the NRC 30 days prior written notice, and that no disbursements or payments from the trust may be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate. After decommissioning has begun and withdrawals from the decommissioning fund are being made pursuant to 10 CFR 50.82(a)(8)~~(i)~~, no further notification need be made to the NRC. If the trust is a qualified Nuclear Decommissioning Fund under Section 468A, it must provide that the assets in the fund will be used only as authorized by Section 468A and regulations thereunder.

As discussed above in Section II.A.3.a, NRC's guidance regarding disbursements undertaken pursuant to NRC's license termination rules is well taken. No NRC notification should be required for any expenditure specifically permitted under any of the provisions of 10 CFR 50.82(a)(8).

> 2.2.3 The trust agreement should specify that the obligation of the trustee~~'s~~, manager, investment advisor, or other person directing investments ~~obligations~~ with respect to investments include (1) day-to-

> day investment management of the fund, guided by general investment instructions ~~that the trustee may~~ received from the licensee or a licensee's designated investment manager, (2) the obligation ~~of the trustee~~ to select investments and perform trust management under the "prudent investor" rule or other rule established by state and/or federal statute, rule, or order, and (3) the obligation ~~of the trustee~~ to avoid specifically prohibited investments, as described below.

These revisions are suggested to conform this guidance to the comments noted above in Section II.A.1 and to reflect the potential roles played by trustees and others as discussed above in Section II.A.4.b.

> 2.2.3.2. The trust agreement must prohibit investments in securities or other obligations of the licensee or any other owner or operator of the facility as well as their affiliates, subsidiaries, successors or assignees, except for investments tied to market indices or other investments in non-nuclear sector collective, commingled or mutual funds. An affiliate is any company that controls, is controlled by, or is under common control with the licensee or any other owner or operator of the facility. A subsidiary is any company that is owned or controlled directly or indirectly by the licensee or any other owner or operator of the facility. A successor or assignee is a company that has acquired possessory rights to the licensee, the facility, or any other owner or operator of the facility.

This revision is suggested to conform the guidance to the explicit terms of the proposed 10 CFR 50.75(h)(1)(i)(A).

> 2.2.3.3. The trust agreement must prohibit investments in securities of other power reactor licensees or any entity owning or operating one or more nuclear power plants, except for investments tied to market indices or other investments in non-nuclear sector collective, commingled or mutual funds. The rule does not require the sale, transfer or other disposition of any such prohibited investment that was made prior to the effective date of the rule.

This revision is suggested to conform the guidance with the revisions to the proposed rule suggested above in Section II.A.4.a, for the same reasons.

~~2.2.3.5. Licensees that are not subject to PUC or FERC jurisdiction should limit investments to "investment-grade" securities, such as investment-grade bonds and preferred stocks, which are those rated at least "BBB" or equivalent by a national rating service. Speculative issues of common stocks (e.g., "bulletin board" stocks on the NASDAQ exchange, "pink sheet" stocks, and stocks not traded on major exchanges) and high yield ("junk") bonds should be avoided.~~

This deletion is suggested for the reasons discussed above in Section II.A.1 above.

2.2.8. Annual deposits in an external sinking fund, including projected earnings, should attempt to approximate the total amount remaining to be accumulated, divided by the remaining years of the license, as determined by the initial and updated certification amount specified in 10 CFR 50.75(c)(1) and (2).

Arithmetic precision is not required for fund accumulation rates. If, during the course of collecting funds, a licensee has accumulated significantly greater decommissioning funds than anticipated, it may reduce its remaining contributions commensurately. Likewise, if a licensee is significantly behind in collections, increased contributions should be used to make up the deficit. A reasonable time may be used to make up any deficit, consistent with good-faith efforts to obtain appropriate rate relief. However, licensees should avoid undue reliance upon contributions weighted in constant dollars toward the end of projected facility operating life. Additionally, the NRC staff considers reliance on an estimated tax deduction for decommissioning expenses at the time such expenses are incurred to be a form of internal reserve and thus not allowed under 10 CFR 50.75(e). If sufficient rate relief by a State PUC or FERC is ultimately not obtained, licensee's stockholders will be expected to cover decommissioning cost through reduced return on equity. Projected rates of earnings on an external sinking fund during plant operation should reasonably approximate the historical real rate of earnings (i.e., after inflation) obtained by a given type of investment.

Licensees and license applicants who use either prepayment or an external sinking fund as a method for providing decommissioning funding assurance are allowed to take a 2 percent real rate of return

credit (i.e., nominal rate of return less inflation) for future earnings on the decommissioning trust fund. (See 10 CFR 50.75(e)(1)(i) and (ii).) During plant operation, this credit should be taken for the remaining years left on the operating license, such that the amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected, when earnings for the decommissioning period and/or safe storage period are taken into account. That is, during plant operation, if the licensee is using the NRC formula amount for minimum levels of decommissioning funding assurance pursuant to 10 CFR 50.75(c), the 2 percent credit may not be taken for any period, such as extended safe storage, that goes beyond a projected decommissioning period, which may not exceed ten years. For purposes of this calculation, licensees should assume equal annual withdrawals to pay decommissioning expenses during the decommissioning period. ~~expected termination of operation as specified in the operating license.~~For plants that have multiple, modular reactors at a single site that will be decommissioned at the same time, full credit also may be taken until termination of operation of the last modular reactor as specified in the license. If license renewal for a plant has been approved by the NRC, the licensee may use the extended license period as the basis for calculating the remaining amount to be collected. As the cost estimate for decommissioning is adjusted annually pursuant to 10 CFR 50.75(b)(2), the adjusted estimate, less amounts already accumulated and taking into account the 2 percent credit, should form the basis of future collections, funds already accumulated, plus projected future trust fund contributions, plus future projected earnings at the allowed 2 percent real rate, should be sufficient to pay decommissioning costs at the time termination of operation is expected. However, ~~pursuant to 10 CFR 50.75(f)(2), when a licensee is within 5 years of the projected end of operations and submits its preliminary decommissioning cost estimate~~ if a licensee uses a site specific decommissioning cost estimate that has been submitted for NRC review, the licensee may take the 2 percent earnings credit over a storage period, as long as the storage period and its cost implications for total decommissioning cost are specifically addressed in the preliminary decommissioning cost estimate.

The NRC formula amount for minimum levels of decommissioning funding assurance is based upon a DECON assumption, which will involve a several year

decommissioning period during which trust funds will continue to have earnings that will exceed the rates of inflation. This is particularly true, because many contracts will be entered into early in the decommissioning process, reducing the inflation risk. Therefore, the Guidance should clarify how licensees may take credit for earnings during the decommissioning period, as provided in the current rule.

For licensees that operate multiple, modular reactors at a single site, it is likely that decommissioning activities will be most efficient and effective if conducted as part of an integrated decontamination and decommissioning project for the entire site. Therefore, in such circumstances, it is reasonable to plan for decommissioning to commence no earlier than the termination of operation of the last modular reactor. (If the timing of the design and construction of multiple modules at a site might result in long lag times between the termination of operation of individual modules, NRC could reserve its authority to require further assurance, if necessary. NRC's existing decommissioning funding reporting requirements in 10 CFR 50.75(f) will assure that NRC is fully informed as to the status of decommissioning funding assurance at each plant.)

Where any licensee has submitted a detailed site specific cost estimate for NRC review that takes into account the cost implications of the period of safe storage, such licensee should be permitted to take the earnings credit through the period of safe storage.

3. Suggested Improvements to Appendix B-3 "Sample Trust Fund"

NRC no doubt recognizes that most agreements governing NDTs are far more complex than the "Sample Trust Fund" agreement provided as Appendix B-3 to DG-1106. Any such agreement must be carefully crafted to assure compliance with various trust law requirements, as well as applicable tax law, including Section 468A of the IRC, and applicable Treasury regulations. In addition, such agreements also reflect various negotiated business terms of agreement between the licensees, or trust Grantors, and the Trustees. Notwithstanding the acknowledged limitations in the NRC's sample trust, we believe that the sample trust should reflect the minimum terms necessary to achieve compliance with the NRC's rules. Therefore, we suggest a few improvements to the sample trust.

Revisions to Section 5 of the Sample Trust Fund should be made, as follows:

> Section 5. Payment for Required Activities Specified in the Plan. The Trustee shall make payments from the Fund to the Grantor or to a

decommissioning contractor of the Grantor as the Grantor may designate upon presentation to the Trustee of the following:

a. A certificate duly executed by the [Authorized Officer] of the Grantor attesting to the occurrence of the events, and in the form set forth in the attached Specimen Certificate (see certificate following standby trust), and

b. A certificate attesting to the following conditions;

(1) that decommissioning is proceeding pursuant to an NRC-noticed plan, and

(2) that the funds withdrawn will be expended for activities undertaken pursuant to that Plan.

Notwithstanding the foregoing, except for payments for administrative costs (including taxes) and other incidental expenses of the Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Fund, no disbursements or payments from the Fund shall be made: (1) unless thirty (30) days' prior written notice of such disbursement or payment has first been made to the NRC; and (2) if the Trustee receives written notice of an objection from the NRC Director, Office of Nuclear Reactor Regulation. Except that, the foregoing shall not apply if the Grantor is making a withdrawal pursuant to 10 CFR 50.82(a)(8).

In the event of the Grantor's default or inability to direct decommissioning activities, the Trustee shall: (1) make payments from the Fund as the NRC or State agency shall direct, in writing, to provide for the payment of the costs of required activities covered by this Agreement; (2) make disbursements to the Grantor or other persons as specified by the NRC, or State agency, from the Fund for expenditures for required activities in such amounts as the NRC, or State agency, shall direct in writing; and (3) refund to the Grantor such amounts remaining after the license has been terminated or as the NRC or State Agency specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

The inserted language suggested above reflects the obligations imposed by the proposed 10 CFR 50.75(h)(1)(ii), as well as NEI's suggested revisions to this subsection and to the proposed 10 CFR 50.75(h)(1)(iii). *See* Sections II.A.3.a and II.A.4.c above.

Further revisions should be made to Section 6 of the Sample Trust Fund, as follows:

> Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the Fund in the best interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:
>
> (a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80A-2(a)), except for investments tied to market indices or other non-nuclear sector collective, commingled or mutual funds, shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
>
> ~~(b) For a reasonable time, not to exceed ___ days, the Trustee is authorized to hold uninvested cash, awaiting investment or distribution, without liability for the payment of interest thereon.~~
>
> (eb) 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 other non-nuclear sector collective, commingled or mutual funds is prohibited;
>
> (c) Any person directing investments made in the Trusts shall adhere to the [applicable state specific investment standard] [and/or] the "prudent investor" standard as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission ("FERC") regulations or any successor regulation thereto (the "Prudent Investor Standard"); and

> (d) The Grantor, its affiliates, and its subsidiaries are prohibited from acting as investment manager for the funds or from giving day-to-day management direction of the funds' investments or direction on individual investments by the funds.

The revisions to Sections 6(a) and 6(b) of the "Sample Trust Fund" are suggested for the reasons discussed above in Section II.A.4.a. The deletion of Section 6(b) is suggested because this is an issue that ought to be addressed in negotiations between licensees and trustees, and NRC's Sample Trust Fund Agreement should not pre-suppose that the trustee would always be entitled to hold funds interest-free for some period of time. The addition of Section 6(c) is suggested for the reasons set forth in Section II.A.1 above. The addition of Section 6(d) is suggested to conform to the proposed 10 CFR 50.75(h)(1)(i)(D), as well as for the reasons discussed in Section II.A.4.b above.

The subsections of Section 8 should be re-lettered (a), (b), (c), (d), & (e), rather than the current (a), (b), (c), ~~(a)~~, & ~~(b)~~.

Revisions to Section 15 of the Sample Trust Fund should be made, as follows:

> Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and, if applicable, the NRC or State agency, or by the Trustee and the NRC or State agency if the Grantor ceases to exist. Notwithstanding any provision herein to the contrary, this Agreement cannot be modified in any material respect without first providing thirty days' prior written notice to the NRC Director, Office of Nuclear Reactor Regulation.

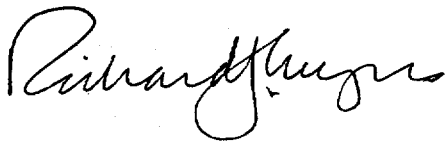
This revision to Section 15 of the "Sample Trust Fund" is suggested to reflect the requirements of the proposed 10 CFR 50.75(h)(1)(ii).

III. CONCLUSION

We appreciate the opportunity to comment on the Proposed Rule and DG-1106. Ensuring the appropriate funding to decommission nuclear power plants is a public health and safety mandate. Upon taking into account the comments and suggestions for improvement noted above, NRC's proposed rulemaking and proposed guidance likely will enhance the assurance for decommissioning funding already provided by the industry and should improve public confidence that all nuclear power reactors will be properly decommissioned. The industry recommends

that a Final Rule and Final Guidance, incorporating these comments, be issued promptly.

Sincerely,



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c: The Honorable Richard A. Meserve, Chairman, NRC
The Honorable Greta Joy Dicus, Commissioner, NRC
The Honorable Edward McGaffigan, Jr., Commissioner, NRC
The Honorable Jeffrey S. Merrifield, Commissioner, NRC
Mr. William D. Travers, EDO/NRC