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VPN-030-2001

Trojan Nuclear Plant  
 Docket 50-344  
 License NPF-1

Secretary,  
 U. S. Nuclear Regulatory Commission  
 ATTN: Rulemakings and Adjudications Staff  
 Washington, D.C. 20555-0001

Dear Sirs:

Comments on Proposed Rule 10 CFR 50.75, "Decommissioning Trust Provisions,"  
 and Accompanying Draft Regulatory Guide (RG) 1.159, Revision 1 (DG-1106)

This letter forwards Portland General Electric Company's (PGE's) comments on the Nuclear Regulatory Commission's (NRC's) proposed amendment to its regulations relating to decommissioning trust provisions for nuclear power plants (66 FR 29244 dated May 30, 2001). This letter also provides PGE's comments on the draft update to RG 1.159, issued as DG-1106 dated May 2001, which proposes guidance to assist licensees in implementing the rulemaking following its being made effective. Finally, this letter documents PGE's endorsement of comments that the Nuclear Energy Institute (NEI) is submitting to the NRC on the subject proposed rulemaking and accompanying draft guidance document. PGE's comments, provided in the attachment to this letter, are in addition to and supplement NEI's comments.

Although not specifically addressed in the attached comments, it is PGE's position that the proposed rulemaking should be applicable only to those power reactor licensees for whom rate regulators no longer exercise oversight authority over the terms and conditions of their decommissioning trust agreement. This position is consistent with Section I, "Background," of the supplementary information in support of the proposed rule, in which the NRC states:

"Until recently, rate regulators have generally exercised direct oversight of the terms and conditions of decommissioning trust agreements. Extensive NRC involvement was not necessary. Because this oversight may cease with deregulation, the NRC believes it needs to take a more active oversight role."

For PGE, the State of Oregon Public Utility Commission continues to exercise direct regulatory oversight of the terms and conditions of the decommissioning trust agreement. Moreover, it is PGE's expectation that such regulatory oversight will continue for the foreseeable future. Thus,

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extensive NRC involvement is not necessary for PGE. Because this same situation may apply to many other power reactor licensees, the proposed rulemaking should be revised to be applicable only if there is no rate regulator oversight of the terms and conditions of the licensee's decommissioning trust agreement.

Notwithstanding this PGE position regarding the proposed rule, PGE has reviewed the proposed rule and the accompanying draft guidance, and based on this review has prepared both substantive, content-related comments and comments of an editorial nature. The more substantive comments address PGE's concerns with specific wording of the proposed rulemaking and/or draft guidance that, if finalized, would represent unnecessary and undue burden on power reactor licensees, and/or may be interpreted to eliminate some of the flexibility currently allowed in the existing rule. One of the more significant concerns for PGE, as a nuclear utility licensee and operator of a facility – the Trojan Nuclear Plant – undergoing active decommissioning in accordance with an NRC-approved License Termination Plan, is wording in the proposed rule that could be interpreted to not allow periodic withdrawals from the decommissioning trust fund without first providing 30-day notice to the NRC prior to each withdrawal. As detailed in the attached comments, such a requirement would entail an unreasonable expenditure of resources and would be extremely cumbersome to implement, and thus PGE requests clarification of the proposed rule wording.

If you have any questions regarding this correspondence, please contact Mr. Lansing G. Dusek of my staff at (503) 556-7409.

Sincerely,

Stephen M. Quennoz  
Vice President,  
Power Supply/Generation

Attachment

c: D. J. Wrona, NRC, NRR  
Director, NMS, NRC Region IV  
U. S. NRC Document Control Desk  
D. Stewart-Smith, OOE  
A. Bless, OOE  
R. J. Myers, NEI

Comments on Proposed Rule 10 CFR 50.75,  
"Decommissioning Trust Provisions" (66 FR 29244, May 30, 2001),  
and Accompanying Draft Regulatory Guide 1.159, Revision 1 (DG-1106)

Comment 1

The proposed new 10 CFR 50.75(h)(1)(iii) states, in part:

"No disbursement or payment may be made from ... [an external] trust, escrow account ... or other account used to segregate and manage ... [decommissioning] funds ... until written notice of the intention to make a disbursement or payment has been given to the [appropriate Nuclear Regulatory Commission [NRC] agency director] ... at least 30-days prior to the date of the intended disbursement or payment."

The literal interpretation of this proposed rule is a requirement for licensees that have begun decommissioning and are already periodically withdrawing from the decommissioning trust fund to submit written notice to the NRC prior to each withdrawal. As the periodic withdrawals from the decommissioning trust fund may be as often as (or perhaps even more often than) monthly, this requirement would entail an unreasonable expenditure of licensee resources and would be unreasonably difficult to implement.

However, it is apparent from Section 2.2.2.4 of DG-1106 that the intent of the proposed 10 CFR 50.75(h)(1)(iii) is that, 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. Because the literal wording of the proposed rule could be interpreted to not allow such periodic withdrawals from the decommissioning trust fund without prior NRC notification and tacit approval, the clarification of DG-1106, Section 2.2.2.4, should be included in the rule itself.

Comment 2

The existing revision of 10 CFR 50.75(e)(1) states, in part:

"Financial assurance is to be provided by the following methods.

...

(iii) A surety method, insurance, or other guarantee method:

...

(B) A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to 10 CFR part 30."

In DG-1106, Section B, "Discussion," under the subheading "Methods of Financial Assurance," the list of acceptable financial assurance methods for reactor licensees includes the guarantee method. However, this item specifies applicability of the parent company guarantee only to non-electric utility applicants and licensees, and excludes power reactor licensees. Moreover, within

the definition of "Financial Test" in Appendix A of DG-1106, it is stated that "[t]his mechanism is unavailable to electric utility (power reactor) licensees."

The non-applicability of the parent company guarantee for power reactor licensees is not apparent from the existing or proposed 10 CFR 50.75(e), as stated above. Furthermore, it seemingly contradicts the requirements and allowances of 10 CFR 30, Appendix A, which specifies "...for a power reactor licensee..." in several sections relating to the use of financial tests and parent company guarantees for providing decommissioning funding assurance. Consistent with the commenter's wish to preserve the option to use the parent company guarantee as allowed by 10 CFR 50.75(e)(1)(iii)(B) and 10 CFR 50.75(e)(1)(vi), the applicability of the "parent company guarantee" (and associated financial test) as a decommissioning financial assurance mechanism for power reactors should be clarified in DG-1106.

#### Comment 3

DG-1106 should include guidance for the application of the self-guarantee as allowed by 10 CFR 50.75(e)(1)(iii)(C).

#### Comment 4

The proposed new 10 CFR 50.75(h)(1)(ii) prohibits licensees from making any material amendments to an account used in accordance with 10 CFR 50.75(e) (e.g., external trust agreement) without first providing written notification to the NRC at least 30 days prior to the proposed effective date of the amendment. With the addition of this new rule, the following reporting requirements of 10 CFR 50.75(f)(1) would become redundant:

"Each power reactor licensee shall report, on a calendar-year basis ... any modifications occurring to a licensee's current method of providing financial assurance since the last submitted report; and any material changes to trust agreements."

Using the guidance proposed in DG-1106, Regulatory Positions 2.1.6.1 and 2.2.2.5, any modification from one financial assurance mechanism to another allowed by 10 CFR 50.75(e) would be considered under the new 10 CFR 50.75(h) to be a material modification, and thus would require 30-day prior notification to, and tacit approval by, the NRC. Similarly, the new proposed rule and DG-1106 specifically state that any material change to a trust agreement requires 30-day prior notification to and tacit approval by the NRC. Since the NRC would have prior notification of both of these changes under the new rule, the requirement of 10 CFR 50.75(f) to report these same changes on a biennial basis (or annual basis for prematurely shutdown and certain other specified reactor licensees) represents a duplication of reporting requirements, which in turn results in unnecessary licensee resource expenditures with no offsetting benefit. Therefore, if the proposed rule is adopted as written, the redundant reporting requirements of 10 CFR 50.75(f)(1) should be deleted.

#### Comment 5

Regulatory Position 1.5 is referenced in several places in DG-1106; however, this regulatory position does not exist. Based on the context of the references, it is not clear if Regulatory Position 1.2, 1.4, 2.2.8, or some other section was the intended reference. The incorrect reference is identified in Regulatory Position 1.2, Paragraph 6 (one instance), and Regulatory Position 2.1.5 (two instances). This reference should be corrected.

#### Comment 6

Regulatory Position 1.4.1 of DG-1106 states, in part:

"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 ...)"

It is not clear in the above statement what is meant by "power reactor licensees not covered by 10 CFR 50.75(c)," since even licensees who are maintaining site-specific cost estimates are required to meet the minimum certification amount specified in 10 CFR 50.75(c). However, this commenter strongly supports this statement provided it accompanies an associated revision to the rule to eliminate the unnecessary requirement for power reactor licensees that maintain an NRC-approved site-specific decommissioning cost estimate and funding plan to also meet the minimum 10 CFR 50.75(c) certification amount.

As stated in Section B of DG-1106, the certification amounts in 10 CFR 50.75(c)(1) act as threshold review levels, and do not necessarily represent actual decommissioning costs for a specific reactor. If a cost estimate has been performed and is periodically updated to reflect the actual cost of a specific facility's decommissioning, and this cost estimate and a schedule for its periodic update are approved by the NRC, the "threshold review levels" of 10 CFR 50.75(c) should be considered to be superseded by the site-specific estimate. In other words, whether or not the amount of an approved site-specific cost estimate is more or less than the 10 CFR 50.75(c)(1) certification amount should be of no consequence, since by definition a site-specific cost estimate approved by the NRC establishes the actual decommissioning costs for a specific site. Therefore, the rule should be revised to specify that for power reactor licensees that maintain NRC-approved site-specific decommissioning cost estimates and funding plans, the requirements of 10 CFR 50.75(c) do not apply. If such a rule revision is not made, then the subject statement in DG-1106 should be reworded or eliminated.

#### Comment 7

The last sentence in DG-1106, Regulatory Position 1.4.3, states:

"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."

However, Regulatory Position 2.1.5, rather than 2.2.5, addresses adjustments to funding levels. This reference should be changed to "... Regulatory Position 2.1.5."

#### Comment 8

Regulatory Position 2.2.1 of DG-1106 states, in part:

"An applicant or licensee using a trust agreement, escrow account, or certificate of deposit ... may use the sample wording for those methods contained in Appendices B.1, B.2, and B.3 of this guide."

The three financial assurance mechanisms cited in this statement do not correspond with the Appendices' numbering order. The subject sentence should be revised to the following:

"An applicant or licensee using an escrow account, certificate of deposit, or trust agreement ... may use the sample wording for those methods contained in Appendices B.1, B.2, and B.3, respectively."

This change is consistent with similar wording in Regulatory Position 2.3.1 of DG-1106.

#### Comment 9

The last sentence of Regulatory Position 2.2.2.5 of DG-1106 states:

"Licensees should interpret the phrase 'amended in any material respect' broadly."

This statement does not contribute to the intent of this revision to RG 1.159, which is to provide more detailed guidance to assist in implementing the changes in the NRC's regulations. Of more assistance to licensees wishing to implement the new rule would be some examples and/or characteristics of changes to trust agreements that would not be considered "material."

#### Comment 10

Regulatory Position 2.7 of DG-1106 cites a list of topics that should be included in a license termination plan required by 10 CFR 50.82(a)(9). Not only is much of this detail beyond the scope of DG-1106, this same list of topics is included in 10 CFR 50.82(a)(9)(ii). Furthermore, considerable detailed guidance is provided for the contents of license termination plans in NUREG-1700, "Standard Review Plan for Evaluating Nuclear Plant Reactor License Termination Plans," and RG 1.179, "Standard Format and Content of License Termination Plans for Nuclear Power Reactors." Therefore, the guidance of DG-1106 would be much more pertinent and focused if the content of DG-1106, Regulatory Position 2.7, is replaced with the following:

"In 10 CFR 50.82(a)(9), submittal of a license termination plan is required at the time a licensee applies for termination of license. The license termination plan must include an updated site-specific estimate of remaining decommissioning costs, as described in detail in NUREG-1700, 'Standard Review Plan for Evaluating Nuclear Plant Reactor License Termination Plans,' and RG 1.179, 'Standard Format and Content of License Termination Plans for Nuclear Power Reactors.'"

NUREG-1700 and RG 1.179 may be added to the references section of DG-1106 as applicable and/or desired.

Comment 11

The definitions of "qualified decommissioning funds" and "non-qualified decommissioning funds" should be added to the glossary of financial terms provided in DG-1106, Appendix A.