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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Michael A. Krupa
Director
Nuclear Safety & Licensing

August 13, 2001

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Rulemaking and Adjudications Staff

Subject: Comments on NRC Proposed Rule on Decommissioning Trust Provisions & Draft Regulatory Guide DG-1106

Reference: *Federal Register* Vol. 66, No. 104, Pages 29244-29251, dated May 30, 2001

CNRO-2001-00038

Dear Madam Secretary:

Entergy Operations, Inc. (Entergy) is pleased to submit our comments in the above captioned matter.

Entergy endorses the comments submitted by Nuclear Energy Institute (NEI) on behalf of the nuclear energy industry in response to the NRC's request for comments on its proposed rule regarding Decommissioning Trust Provisions and Draft Regulatory Guide DG-1106 (Proposed Revision 1 of Regulatory Guide 1.159), "Assuring the Availability of Funds for Decommissioning Nuclear Reactors." Additionally, Entergy has the following comments:

1. The final rule should specify an implementation time period and/or process. The time/process should consider: (1) Some of the proposed changes concerning acceptable investments could potentially require divestiture of securities or other obligations in order to comply with the new NRC criteria. A short implementation time together with varying market conditions could adversely affect existing trust funds. (2) Existing trust fund changes/amendments may require other non-NRC regulatory approvals (e.g., FERC, State PUC). (3) Current trust funds may include amounts collected for activities that the NRC does not include in its definition of decommissioning (see comment 2.).

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2. 50.75(h)(1)(iii) proposes to restrict disbursements or payments from the trust, escrow account, Government fund, or other account to ordinary administrative expenses, decommissioning expenses, or transfer to another financial assurance method until final decommissioning has been completed. Currently some funds include amounts to be spent on decommissioning activities that the NRC does not include in its definition of decommissioning (re: 10CFR50.2 and NUREG-1628, section 1.1 & 10.9). Examples of such activities include non-radiological cleanup required by RCRA or other environmental regulations, cleanup to radiological standards mandated by state regulations which exceed the NRC cleanup criteria, green field activities, and long-term spent fuel storage. These activities are not included in the NRC definition of "decommission" even though they may be activities required to be discussed in the License Termination Plan and evaluated under NEPA. The inclusion of funding for these activities in the decommissioning trust fund can be required by other non-NRC regulatory agencies. Under the proposed rule (combined with the definition of "decommission" in 10CFR50.2), if piping, valves, pumps, switchgear, instruments, cable, soil, or concrete rubble were determined to be non-radioactive, payment for costs of demolition and disposal could not come from the decommissioning trust fund. Current regulations [i.e., 10CFR50.82(a)(6) & (8)] impose restrictions on the effect of any withdrawals without prohibiting withdrawal of funds allocated for decommissioning activities that do not meet the narrow 10CFR50.2 definition, thus ensuring that sufficient funds are available for the NRC radiological scope of decommissioning. Even though separate trust funds could theoretically be established for NRC radiological decommissioning (10CFR50.2 definition) and other decommissioning activities, it would not necessarily be practical or cost-effective to require the physical demolition and waste disposition work activities to institute artificial accounting to ensure which fund pays for which activities. Likewise, if demolition funds were estimated assuming an area might be radiologically contaminated, those funds would have to be transferred to a different trust fund in order to pay for demolition if the area was determined to not be contaminated during the actual decommissioning.
3. §50.75(h)(1)(iii) proposes to restrict disbursements or payments from the trust, escrow account, Government fund, or other account to ordinary administrative expenses, decommissioning expenses, or transfer to another financial assurance method until final decommissioning has been completed. It is possible that state public utility commissions could require overfunded trusts to rebate money to ratepayers (rather than merely adjust the future collection rate). The rule should allow the NRC to approve such a disbursement following adequate review.

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4. Further clarification is needed for the proposed §50.75(h)(1)(i)(A), "any other entity owning one or more nuclear power plants." Is the rule intending to allow investment in securities of an entity that is part owner of a nuclear power plant (e.g. 10% owner)? Is the rule intending to disallow investment in a mutual fund in which 2% of the fund is invested in securities of a parent company whose subsidiary is a minority owner of a foreign or domestic nuclear plant? Is the term "nuclear power plant" inclusive of those being decommissioned and those licensed to operate?

Thank you for the opportunity to provide these comments. If you have any questions concerning this submittal, please contact George Zinke (601-368-5381) or me (601-368-5758).

Sincerely,



MAK/GAZ/FGB/baa

cc:

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