

DOCKET NUMBER
PROPOSED RULE **PR 50**

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DOCKETED
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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Detroit Edison



A DTE Energy Company

August 09, 2001
NRC-01-0057

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-001
Attn: Rulemakings and Adjudications Staff

Subject: **Comments on Proposed Rule on Decommissioning Trust Provisions and Draft Regulatory Guide DG-1106**

This letter submits Detroit Edison's comments on the proposed rule on Decommissioning Trust Provisions published in the May 30, 2001 Federal Register (RIN 3150-AG52), and related Draft Regulatory Guide DG-1106, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors". Detroit Edison is the licensee for Fermi 2, an operating boiling water reactor, and Fermi 1, a sodium cooled fast breeder reactor permanently shutdown in 1972. Fermi 1 is in the final phase of SAFSTOR.

Detroit Edison agrees that it is important to fund nuclear plant decommissioning during plant operation. Detroit Edison also agrees with establishing rules to cover the situation where nuclear decommissioning costs are no longer subject to oversight by the state public utility commissions rather than determine license conditions or commitments on a case-by-base basis. However, all licensees should not need to modify their trust agreements to meet the requirements proposed by the new rule. Where decommissioning funding is still regulated and trusts are being funded by rates or wire charges regulated by the state or Federal Energy Regulatory Commission (FERC), changes are not needed to provide adequate protection for public health and safety. Unnecessary costs potentially could be incurred to modify trust agreements and possibly adjust investment portfolios. Revision of trust agreements and buying and selling of investments would involve significant fees and additional taxes which would reduce the funds available for actual decommissioning activities. The provisions of the rule and guideline should apply to those facilities where decommissioning funding will no longer be regulated by the state or FERC.

Template = SECY-067

SECY-02

Specific comments on the proposed rule and regulatory guide are as follows:

Proposed Rule Comments

Detroit Edison agrees with NEI's comments on the proposed rule and offers additional comments below.

- The 30-day notification of all disbursements or payments from the trust (excluding administrative charges) will be a major burden during decommissioning and even during decommissioning planning. Notifications would be required frequently, depending on frequency of trust disbursements to cover decommissioning costs. At most the rule should require a one-time notification before initial withdrawal from the trust for decommissioning or decommissioning planning expenses. Plants currently in the progress of being decommissioned should be grandfathered from this notification requirement, since it would not add additional assurance that adequate funding is available and would duplicate other notifications. These other rules already require that the NRC be notified of permanent shutdown, changes in decommissioning plans and other specific decommissioning milestones.
- Investment limitations should apply to all new investments made 90 days after the rule becomes effective. Detroit Edison believes it would not be prudent to require the selling of any existing investments that do not meet the new criteria and the buying of alternate investments that meet the new criteria. Both buying and selling transactions typically incur fees. Also, there may be substantial tax consequences at the time of the sale.
- Preferably, a grandfathering of existing trusts should be allowed, as discussed earlier. If not, an implementation period would be needed. Six months appears reasonable, considering the coordination and reviews that would be involved. The implementation statement could include a clause requiring implementation of the rule if ownership will be changing or elimination of state and FERC oversight of decommissioning funding during the implementation period.
- By prohibiting investment in securities of other power reactor licensees, the NRC is establishing a position that ownership of a nuclear power reactor is risky and an unsound investment. Is this the message the NRC wants to send to licensees, the investment community and the public? Detroit Edison understands that the NRC's mission does not include promotion of nuclear power. However, this message can be taken as a discouragement of investing in nuclear plants. Detroit Edison questions whether limiting investment in securities of other power reactor licensees is within the jurisdiction of the NRC.

Draft Regulatory Guide DG-1106 Comments

Comments duplicative to those previously made on the proposed rule are not repeated here.

- 1.) The terminology in the guide varies between recommendations (e.g. should) and requirements (e.g. must). Recommendations are more appropriate for a guideline.
- 2.) The notification requirements for disbursements and material changes ought to apply to the licensee, rather than the trustee. The licensee is the license holder and so is required to meet the license and associated regulations. The proposed rule has the licensee notifying the NRC of material changes to the trust, while the guide specifies the trustee is responsible.
- 3.) Section 1.1.1 should recognize that the certification amounts in 10 CFR 50.75 are specific for BWRs and PWRs. Other reactor licensees need to certify they will have adequate funds for decommissioning, however an exemption is not needed if the amount differs from the BWR and PWR specified formulas. This comment also applies to Section 2.6.1.
- 4.) The last sentence of the last paragraph in Section 1.2 should be separated into a new paragraph since it applies to more than non-electric utility applicants and licensees.
- 5.) The second and third paragraphs of Section 1.2 are confusing, as written.
- 6.) Detroit Edison does not see a need for DG-1085 the draft regulatory guide on cost estimates, which is mentioned in Section 1.3.
- 7.) Section 2.1.5 refers to Position 1.5, which does not exist.
- 8.) Add, "as needed" to end of last sentence in Section 2.1.5, since adjustments may not be needed.
- 9.) The annual adjustment frequency in Section 2.1.5 for licensees that are no longer rate regulated or do not have access to a non-bypassable charge is too frequent. Short-term market fluctuations could lead to more frequent adjustments than truly necessary and the administrative costs associated with such adjustments. Decommissioning is normally a long-term investment and as such, too frequent changes could lead to losses and increased investment costs. The fund adequacy should be evaluated annually, but annual adjustments may not be prudent.
- 10.) Regarding Section 2.2.1, the funding mechanism will not ensure that adequate information concerning funds is provided to the NRC. It is the licensee's responsibility to do so per the rule. Note, even the sample instruments in the appendices do not include NRC reporting requirements, nor should they. Also,

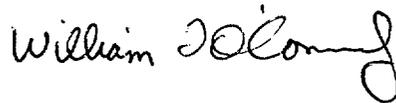
Section 2.2.5 should be revised to delete "terms relating to the provision of information to the NRC" from the description of key provisions of a trust.

- 11.) Detroit Edison recommends that another word be used in lieu of "indicia" in Section 2.2.1.
- 12.) Estimated tax deductions should be allowed to be assumed to cover taxes on earnings which will be due when investments are sold to meet decommissioning expenses.
- 13.) The rule specifically allows use of 2% earnings credit over the decommissioning period. Section 2.2.8 of the guide should be revised to allow the 2% earnings credit during extended safe storage.
- 14.) The third bullet in Section 2.3.2 is confusing.
- 15.) Section 2.4.3 refers to Regulatory Position 2.2.2, which does not pertain to records as implied here.
- 16.) The content of the periodic report on decommissioning funding as described in Section 2.6.2 appears excessive. If more detailed information is desired for a specific trust, the information can be looked at on a case by case basis.
- 17.) The sample agreements in the appendices do not reflect that the rule permits use of funds for decommissioning planning. They would not allow disbursements until decommissioning is in progress. Spending money on planning before starting decommissioning is a prudent use of funds, when possible.
- 18.) For power reactors, a Post Shutdown Decommissioning Activities Report is submitted rather than a plan, until the License Termination Plan is submitted later in the decommissioning. The sample agreements refer to plans and procedures.
- 19.) Some of the samples include certification that the licensee is required to commence decommissioning. For most power reactors, the licensee has decided to commence decommissioning rather than being required to do so.
- 20.) Appendix B-1, paragraph 4 should include that remaining funds should be returned to the licensee or other specified party upon receipt of documentation of license termination.
- 21.) In Appendix B-6.5, Item 9, the 120 day time frame should be changed to 180 days to allow sufficient time for action, since the period also includes notification and NRC review time. Also, in Item 10, the 30 days should be changed to 90 days to allow sufficient time to prepare, review and approve an alternative financial assurance mechanism.

Secretary, U.S. NRC
NRC-01-0057
August 09, 2001
Page 5

If there are any questions on these comments, contact Lynne Goodman at (734) 586-1205.

Sincerely,

A handwritten signature in black ink that reads "William T. O'Connor, Jr." The signature is written in a cursive style with a large, looped initial "W".

William T. O'Connor, Jr.
Vice President, Nuclear Generation

WTO/LSG/ljd

cc: S. Brown
E. Kulzer
T.J. Kim, Fermi 2 NRC Project Manager
NRC Resident Inspector
NRC Region III Administrator