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January 30, 2002

Mr. Michael T. Lesar
Rules and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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Rules and Directives
Branch

Re: **Draft Guidance on Decommissioning
Cost Estimates for Nuclear Power Reactors**

Dear Mr. Lesar:

Rochester Gas and Electric Corporation (RG&E) is pleased to respond to the NRC's invitation to comment on Draft Regulatory Guide, DG-1085, "Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors" (DG-1085), and Draft NUREG-1713, "Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors" (Draft SRP), both issued in November 2001. 66 Fed. Reg. 59,518 (November 28, 2001). DG-1085 and the Draft SRP together seek to provide NRC licensees guidance on required cost estimates applicable to various stages and methods of decommissioning nuclear power reactors.

RG&E supports the NRC's effort to provide licensees with updated guidance on a standardized format and required content for decommissioning cost estimates. RG&E offers the following comments to help improve the usefulness of the guidance.

1. The NRC Should Better Integrate Its Funding Assurance Requirements for Decommissioning and Spent Fuel Storage

For its regulatory purposes, the NRC has maintained a distinction between funding assurance for radiological decommissioning and funding for spent fuel management following permanent cessation of operation. Separate requirements are specified for each in 10 C.F.R. §§ 50.75 and 50.82 (decommissioning) and 50.54(bb) (spent fuel management). DG-1085 maintains this distinction and indicates that many spent fuel storage costs are generally not included within the costs of radiological decommissioning as specifically defined by the NRC. See DG-1085, at pp. 2 and 6.

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The historical distinction between decommissioning costs and post-shutdown spent fuel management costs dates from at least the early 1980s when it was assumed that spent fuel would not be stored on-site in significant amounts following the permanent shutdown of a reactor. See the NRC's original Waste Confidence Rule (10 C.F.R. § 51.23), 49 Fed. Reg. 34,694 (1984). This distinction was founded in part on the expectation that the Department of Energy would meet its obligation to accept spent nuclear fuel and high-level radioactive waste for disposal as required by the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. § 10101 *et seq.*), thereby resulting in relatively prompt completion of the transfer of any remaining spent fuel to DOE following plant shutdown and before decommissioning began.

This underlying assumption no longer reflects the current reality in light of the ongoing delays in the development of an operational repository at Yucca Mountain. As a result, for the foreseeable future, NRC licensees most likely will have to continue storing spent fuel and high-level waste on site, perhaps well after permanent cessation of operation and through completion of the decommissioning process. The Draft SRP itself recognizes that spent fuel management, including dry storage, may have to continue during the decommissioning process, and that spent fuel management "can have a significant effect on decommissioning activities and, therefore, decommissioning costs." Draft SRP at p. 15 and Figure 1.

Given the uncertainties with the availability of viable options for storing and disposing of spent fuel off-site and the significant impact of spent fuel management on decommissioning costs, the NRC should take this opportunity to provide guidance that better integrates its separate funding requirements for decommissioning and post-shutdown spent fuel management. In particular, the discussion of spent fuel storage costs in the final version of DG-1085 and the SRP should not suggest that licensees need to prepare separate cost estimates for decommissioning and spent fuel storage. During the decommissioning process, the same licensee and contractor personnel performing decommissioning activities necessarily would perform spent fuel storage activities as well. In performing cost estimates, it is difficult, and often not meaningful, to try to segregate decommissioning-related work on a facility from spent fuel management work at the same facility. As the Draft SRP itself suggests, certain activities related to on-site spent fuel management will have a significant effect on the decommissioning process. DG-1085 and the Draft SRP should allow licensees to prepare one cost estimate for decommissioning and spent fuel storage, as long as it contains an appropriate allocation of the estimated costs to decommissioning and spent fuel storage.

For these reasons, licensees would typically prepare a single cost estimate covering both decommissioning activities and spent fuel management. This is the most efficient approach as well since the preliminary decommissioning cost estimate due at or about five years before the projected end of operations (under 10 C.F.R. § 50.75(f)(2)) will typically be submitted at the same time as the spent fuel management funding plan required under 10 C.F.R. § 50.54(bb), which in most cases will be due five years before expiration of the operating license.

In the guidance documents, the NRC should also be cautious not to state positions that could prejudice licensees before other agencies. For example, as the NRC is well aware, state

public utility commissions (PUCs) and the Internal Revenue Service each have a role in nuclear decommissioning funding. Maintaining outdated distinctions between spent fuel management costs and decommissioning costs could prejudice a licensee's ability to obtain full cost recovery in rates or tax-efficient treatment of nuclear decommissioning funds. At a minimum, the NRC's guidance should make clear that any distinctions in this regard are solely for the NRC's own purposes of specifically defining the scope of radiological decommissioning for public health and safety.

2. The NRC Should Permit Flexible Options for Providing Decommissioning Funding Assurance

The NRC has noted that licensees may increasingly be interested in more efficient ways to satisfy decommissioning funding assurance requirements.¹ The NRC has shown flexibility in this regard in conducting decommissioning funding assurance reviews in the context of operating license transfer requests associated with plant sales. In the license transfer context, the NRC has permitted licensees flexibility in fashioning alternative means, such as the use of a parent company guarantee to supplement the external sinking fund, to demonstrate the availability of adequate decommissioning funding where a substantial portion of the required funds has already been accumulated.

It would be appropriate for the NRC to consider providing similar flexibility for all licensees in other contexts as well. In connection with the discussion of available funding methods in DG-1085, the NRC should take the opportunity to explain how a parent company guarantee or insurance method might be used to augment prepayment or an external sinking fund in certain cases – for example, as part of a licensee's plan for adjusting the level of funds under 10 C.F.R. § 50.75(f)(2) in connection with the preliminary decommissioning cost estimate due approximately five years before the projected end of operations. As in the case of license transfers to non-regulated entities, these flexible alternatives should provide equivalent assurance for many licensees.

3. Additional Comments

RG&E has several other specific comments on the draft guidance:

- Pursuant to 10 C.F.R. § 50.75(f)(2), the NRC requires that licensees submit a preliminary decommissioning cost estimate at or about five years prior to the projected cessation of operation. DG-1085 does not discuss how detailed the "preliminary decommissioning cost estimate" must be to be acceptable to the NRC. While flexibility to tailor the preliminary cost estimate should be

¹ See Preliminary Impact Assessment of Nuclear Industry Consolidation on NRC Oversight, 66 Fed. Reg. 34,293 (2001), at Category 4.

maintained, some additional clarification on this aspect of DG-1085 may be useful. For example, some licensees may want to perform a new site-specific cost estimate at this stage of the plant's life. While this is not necessarily required, it might be useful for the NRC to revise the first paragraph under Section C.1 of DG-1085 to state that the preliminary decommissioning cost estimate may be a new or previously developed site-specific study performed by a licensee. The NRC's guidance should permit use of a previously performed cost estimate to satisfy Section 50.75(f)(2) if it is still reasonably representative and current (*e.g.*, completed within the previous two to three years).

- In addition to the preliminary decommissioning cost estimate at or about five years prior to the projected cessation of operation, the NRC also requires licensees to submit, pursuant to 10 C.F.R. § 50.82(a)(8)(iii), a site-specific decommissioning cost estimate within two years following permanent shutdown if not submitted earlier. For some plants, these two different estimates may overlap substantially. The NRC should explain in the proposed guidance in DG-1085 the extent to which licensees may use the Section 50.75(f)(2) preliminary decommissioning cost estimate to satisfy the Section 50.82(a)(8)(iii) site-specific estimate requirement. As discussed above, licensees should be permitted to rely upon, at least in part, a previously submitted estimate so long as it remains reasonably current and accurate.
- Section I, Financial Assurance, of the Draft SRP does not discuss the provisions in 10 C.F.R. § 50.75(e)(1)(ii) regarding the 2 percent credit for future fund earnings. The standard procedure that has been used in license transfers for calculating this credit could be documented here.

RG&E appreciates the opportunity to comment on DG-1085 and the Draft SRP. Should you have any questions concerning these comments, please contact Thomas W. Yurik at (585) 771-2116.

Sincerely,

[Original signed by R. Mecredy]

Robert C. Mecredy