

REGULATORY ANALYSIS FOR AMENDING REACTOR DECOMMISSIONING TRUST PROVISIONS

The NRC has determined that it would be necessary to revise the NRC regulations to require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. It intends to do this by requiring that the decommissioning trust agreements: (1) ensure that special care is taken to safeguard the trust corpus from investment risks, (2) provide adequate information concerning the trust to the NRC, and (3) provide safeguards against improper payments from the trust.

1. Statement of the Problem and Objective

With the advent of deregulation of the electric generating industry, State rate regulators are no longer overseeing the terms and conditions of licensees' decommissioning trust agreements. As a result, it is necessary for the NRC to take a more active oversight role to ensure that there is no diminution of efficacy of the trust agreements. Further, given the NRC's recent experience with license transfers and the expected receipt of additional transfers in the future, this rulemaking would expedite future transfers by providing regulatory predictability and stability for license transfers.

2. Identification and Preliminary Analysis of Alternative Approaches

In order to address this issue and respond to an August 10, 1999, Staff Requirements Memorandum (SRM), the NRC staff submitted a rulemaking plan to the Commission on December 30, 1999 (SEC-00-0002). The plan identified two rulemaking options. The Commission approved the rulemaking plan and one of the options in an SRM on February 9, 2000. In the SRM, the Commission directed the NRC staff to include any specific trust fund terms and conditions necessary to protect the funds fully in the rule itself, and that sample language for trust agreements consistent with the terms and conditions within the rule may be provided in the regulatory guide. The staff submitted a proposed rule on decommissioning trust provisions (SECY-01-0049) to the Commission on March 23, 2001. The Commission issued a staff requirements memorandum (SRM) on April 20, 2001, approving publication of the proposed rule after some revisions. The proposed rule was published in the *Federal Register* on May 30, 2001 (66 FR 29244). A total of 36 letters were received from 34 commenters. The letters contained approximately 280 comments on the proposed rule and draft regulatory guide. Seventeen of the commenters were licensees, 11 were representatives of utility groups (some of whose members are licensees), 3 were State agencies or commissions, 1 was the National Association of State Regulatory Utility Commissioners (NARUC), and 2 were investment management companies. About half of the comments were unique. The comments were fairly equally divided between the proposed rule and the draft regulatory guide.

3. Estimation and Evaluation of Values and Impacts

With respect to the proposed oversight activities, licensees are already required by NRC regulations to execute decommissioning trusts (if that is the financial assurance option they chose) regardless of whether the trusts are required to be reported to, or regulated by, a rate regulator. The NRC staff estimates that the rulemaking would impose a one-time burden of

about 60 to 120 additional hours for each of the 50 assumed non-rate regulated licensees to prepare an initial review of and revisions to its trust agreement to ensure the trust agreement's consistency with the objectives and criteria of the rule and to fully consider the related guidance in revised Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors." When the licensee's trust is consistent with the NRC's revised guidance, less licensee effort would be needed. (Based on a previous NRC staff review of trust agreements, most appear to contain provisions consistent with sample trust terms and conditions contained in current Regulatory Guide 1.159. However, those sample terms and conditions are being updated and expanded to address issues that have arisen as a result of deregulation and increased license transfer activity.) Further, if the new requirements cause a licensee to revise its trust agreement, it must submit a revised report to the NRC on the status of its decommissioning funding, consistent with the requirements contained in 10 CFR 50.75(f)(1). The NRC staff would then need to review the report, which the staff estimates would take approximately 2 to 4 hours per report. Also, if one assumes that 50 licensees (i.e., those that are not rate regulated) would need to review their trust agreements and submit revised reports within the first year of the rule's implementation, the impact on the NRC staff would range from 100 to 200 staff hours.

With respect to license transfers, the NRC is proposing financial assurance conditions it deems necessary in orders approving the transfers. The savings to licensees engaged in license transfers would result from standardized trust agreement language that could be included prior to submission of license transfer applications. The NRC would also benefit from being able to perform reviews of trust agreements based on common regulations and guidance. Reviews of the license transfer trust agreements take a minimum of 40 NRC staff hours and are more likely in the 80- to 100-hour range. For both the trust agreement portion and the license transfer component of the proposed rule, it appears that there will not be a significant increase in burdens on either licensees or the NRC.

In general, it appears that the greatest benefits that would result from this proposed rule are the increased assurance that an adequate amount of decommissioning funds will be available for their intended purpose and the corresponding regulatory efficiency this proposed rule promotes.

The above values and impacts are based on the amendments to 10 CFR Part 50. While 10 CFR Part 72 is also being amended, that is a conforming change and no additional values nor impacts are assumed to accrue as a result of its implementation. The benefit of this is that compliance between Parts 50 and 72 would be beneficial to both the NRC for enforcement purposes and licensees for compliance purposes.

4. Presentation of Results

As we noted above, the impact on a licensee to review and revise its trust agreement to make it consistent with the proposed rule and guidance is assumed to be between 60 to 120 hours. Assuming 50 reactor licensees (i.e., those that are not rate regulated) would need to review and revise their trust agreements to ensure the trust agreements' consistency with the objectives and criteria of the rule and to fully consider the related guidance in revised Regulatory Guide 1.159 results in an industry total impact of between 3,000 to 6,000 hours. (In some cases, a report will cover more than one power reactor owned by the same licensee. In other cases, co-owners will submit separate responses for their proportionate shares of the

same reactor.) At an assumed average hourly rate of \$130, the total industry implementation cost is estimated to range between \$390,000 to \$780,000. The rate for an individual licensee is estimated to be between \$7800 to \$15,600.

Similarly, the initial impact of this proposed action on the NRC is for the NRC to review any new reports that licensees would need to submit based on the revised trust agreement guidance. As noted above, we assumed about 50 of the licensees would need to submit revised reports and the impact on the NRC staff (at 2 to 4 hours per report) would range from 100 to 200 hours or from \$8000 to \$16,000 assuming an hourly rate of \$80.

With respect to license transfers, licensees would save staff time by having explicit NRC requirements and guidance that should assist the licensees in the proper submittal of any transfers and eliminate the need to resubmit revised transfer applications. However, it is unclear as to the number of transfers that will be submitted to the NRC. The impact of improved license transfer guidance on the NRC is a decrease in the amount of staff time needed to approve license transfers. This is estimated to be about a 20 staff-hour reduction or a \$1600 savings to the NRC per transfer (assuming a \$80 hourly rate for NRC staff time). However, it is uncertain as to how many additional license transfers might be received by the NRC for review and approval.

There would be several additional benefits of this proposed rule. The greatest would be the increased assurance that there would not be any diminution of efficacy of the trust agreements and that the decommissioning funds would be available for their intended purpose. Further, by addressing this issue generically, through rulemaking, rather than continuing the current case-by-case approach, it is expected that the burden on the NRC staff would be reduced by several hours for each license transfer the NRC needs to approve. Another beneficial attribute of this proposed action is “regulatory efficiency” resulting from the expeditious handling of future license transfers by providing regulatory predictability and stability for the transfers. Lastly, the conforming change to 10 CFR Part 72 would be beneficial to both the NRC for enforcement purposes and licensees for compliance purposes.

5. Decision Rationale for Selection of the Proposed Action

As discussed above, the additional burdens on a licensee and the NRC are expected to be modest. However, the revised requirements are necessary to ensure that nuclear power reactor licensees provide for adequate protection of the public health and safety in face of a changing competitive and regulatory environment not envisioned when the reactor decommissioning funding regulations were promulgated and that the changes to the regulations are in accord with the common defense and security.

6. Implementation

The NRC staff proposes that any Federal rulemaking take effect one year after publication of the final rule in the Federal Register.