

January 3, 2003

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-02-0085 - RECENT ISSUES
WITH RESPECT TO DECOMMISSIONING FUNDING
ASSURANCE THAT HAVE ARISEN AS PART OF LICENSE
TRANSFER APPLICATIONS AND OTHER LICENSING
REQUESTS

The Commission has disapproved issuance of a regulatory information summary (RIS) and initiation of rulemaking at this time. The staff should continue to review requests for withdrawal or non-transfer of funds from decommissioning trusts on a case-by-case basis, except for routine tax and administrative expenses or for decommissioning planning as provided by regulation. The staff should not allow the withdrawal of funds that have been deposited to meet NRC decommissioning objectives, as identified in a site-specific study as being necessary to complete radiological decommissioning or are necessary to satisfy the generic formula amounts set forth in 10 C.F.R. § 50.75(c), even if those amounts have grown beyond the levels required by either the generic formula or a site-specific estimate. As a policy matter, while a trust is accumulating, our regulations should be interpreted as strictly as possible to preclude withdrawals and limit transfers of funds (both radiological and non-radiological).

The staff should determine if either a RIS or rulemaking is still prudent and can be accomplished in a manner that will not limit our jurisdiction and which will not encourage licensees to withdraw decommissioning funds. The staff should provide the Commission a paper that explores the legal and policy issues regarding withdrawal of non-decommissioning funds deposited to serve purposes other than NRC requirements (e.g., for greenfield restoration) from fully-funded decommissioning funds. In this connection and in recognition that investment values and decommissioning costs can fluctuate, decommissioning funds that exceed NRC requirements should not necessarily be subject to withdrawal. However, the staff should consider the possibility that during the extended term of a renewed license, the fund may accumulate gains that cause the decommissioning fund to far exceed any amount necessary to weather severe economic downturns and decommissioning cost increases and thus, on a case-by-case basis, some withdrawals could be appropriate.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CFO
OCA
OIG