

August 6, 2003

Mr. Marvin S. Fertel
Senior Vice President and
Chief Nuclear Officer
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington, DC 20006-3708

SUBJECT: Administrative Changes to NRC Final Rule on Decommissioning Trusts

Dear Mr. Fertel:

This is in response to your letter of July 1, 2003, on the referenced subject, in which the Nuclear Energy Institute (NEI) requested the Nuclear Regulatory Commission (NRC) to correct what NEI described as being administrative errors in the Decommissioning Trust Rule. NEI identified four proposed modifications to the rule.

I. Notification Requirement for Administrative Expenses

The first suggested change relates to "Notification Requirement for Administrative Expenses." NEI stated that the NRC did not intend, as is supported by the language in its Statement of Consideration, for licensees to notify the NRC when paying ordinary trust administrative expenses. NEI asserted that ". . . [T]he above-cited provisions of the final rule failed to associate administrative expenses with an exclusion from the notice requirement." In fact, the final rule states in § 50.75(h)(1)(iv) ". . . Disbursements, or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, *other than for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed. . .*" (emphasis added.)

In order to eliminate any further confusion regarding the present rule language, the NRC intends to conduct rulemaking to revise the rule language similar to the language NEI proposed. That is, 10 CFR 50.75(h)(1)(iv) will read "Except for withdrawals being made under 10 CFR 50.82(a)(8) *or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made, from the trust, . . .*" (emphasis added.)

Further, rulemaking will be conducted to revise the first sentence of 10 CFR 50.75(h)(2) to read “Licensees that are ‘electric utilities’ under § 50.2 that use prepayment or an external sinking fund to provide financial assurance, shall *include a provision* in the terms of the trust, escrow account, Government fund, or other account used to segregate and manage funds that, except for withdrawals being made under 10 CFR 50.82(a)(8) *or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made, from the trust, . . .*” (emphasis added.)

II. Effective Date of the New Rule

The second issue NEI identified relates to the “Effective Date of the New Rule.” NEI’s position is that certain changes made by the rule, other than those changes in 10 CFR 50.75(h)(1)-(3), should be made immediately effective, rather than on December 24, 2003, as is now specified in the rule. The NRC believes that there is no substantive reason not to make the generic “no significant hazards consideration” determination (50.75(h)(4)) effective immediately, since the same reasoning underlying this provision would be applicable before December 24, 2003. Therefore, the NRC will make this particular change. The NRC does not believe that the effective date of provisions other than 10 CFR 50.75(h)(1)-(3) identified by NEI (Sections 50.75(e)(1)(i) and (ii)) should be changed, because there are more substantive changes involved and there may be unintended impacts not fully accounted for and addressed in this rulemaking.

III. Preserving the Options to Retain Existing License Conditions

NEI stated that the rule language does not reflect the intent of the Commission that individual licensees should have the option of retaining their existing license conditions. The NRC agrees with the comment and plans to amend the rule by adding the following as a new section 10 CFR 50.75(h)(5).

“The provisions of 10 CFR 50.75(h)(1)-(3) do not apply to any licensee that, as of December 24, 2003, has existing license conditions relating to decommissioning trust agreements so long as the licensee does not elect to amend those license conditions.” If a licensee with existing license conditions relating to decommissioning trust agreements elects to amend those conditions, the license amendment shall be in accordance with the provisions of 10 CFR 50.75(h).

IV. Investment Prohibition

NEI stated that the rule failed “to include a general prohibition against investments in nuclear plant owners, although such a prohibition was intended . . .,” and proposed the following change in § 50.75(h)(1)(i)(A) which, as revised, would read: “. . . Is prohibited from investing the funds in securities or other obligations of the licensee or any other owner or operator of the any power reactor . . .” The NRC agrees and intends to conduct rulemaking to amend the last sentence in that paragraph so that it would read: “. . . provided further that ~~these restrictions no more than 10 percent or less of their trust assets may be indirectly invested in securities of any other~~ entity owning one or more nuclear power plants.”

While NEI described their proposed changes as administrative, the NRC will initiate clarifying changes through the issuance of a direct final rule, rather than through the issuance of a correcting amendment.

The NRC appreciates your interest in making this a better rule and thanks you for your thoughtful comments.

Sincerely,

/RA/

Brian E. Thomas, Acting Program Director
Reactor Policy and Rulemaking Program
Office of Nuclear Reactor Regulation

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Karen Cyr, Esq.

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Commissioner McGaffigan
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Karen Cyr, Esq.
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