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November 21, 2003

10 CFR 50.12

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555-0001

Quad Cities Nuclear Power Station, Units 1 and 2  
Facility Operating License Nos. DPR-29 and DPR-30  
NRC Docket Nos. 50-254 and 50-265

**Subject:** Temporary Exemption Request from the Requirements of 10 CFR 50.75(h)(2)

This request is submitted by the undersigned counsel on behalf of MidAmerican Energy Company (MEC), which is licensed by the Nuclear Regulatory Commission to possess its 25% ownership interest in the Quad Cities Nuclear Power Station, Units 1 and 2.

MEC is subject to traditional "cost of service" regulation in Iowa and is, therefore, an "electric utility" within the meaning of 10 CFR 50.2. MEC uses the external sinking fund method to provide financial assurance for decommissioning by making annual contributions to nuclear decommissioning trusts (NDTs) that have been authorized by the Illinois Commerce Commission (ICC). *E.g.*, "Petition for Authority to Replace The Northern Trust Company as Trustee, Approve Certain Trust Agreements with The Bank of New York and Request for Waiver of Hearing," Docket No. 98-0854, (Dec. 16, 1998), 1998 Ill. PUC LEXIS 1157.

10 CFR 50.75(h)(2) specifies that licensees that are "electric utilities" under § 50.2 and that use an external sinking fund to provide financial assurance shall provide in the terms of the NDT that, with certain exceptions, no disbursements may be made from the trust without first providing the NRC with 30 working days prior written notice. The provisions of this rule become effective on December 24, 2003. MEC prepared proposed amendments to the agreements for its NDTs in order to comply with the requirements of 10 CFR 50.75(h)(2) and

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submitted these proposed changes to the ICC Staff for their informal review in late August. Thereafter, MEC responded to questions from the ICC Staff following their informal review and later obtained preliminary concurrence by the ICC Staff in late October. MEC then submitted a formal petition dated November 12, 2003 to seek an ICC Order to approve the proposed amendments. MEC is required to seek ICC approval of any material amendment to its trust agreement. See ICC Interim Order, Docket No. 88-0301 (Dec. 7, 1988), 1988 Ill. PUC LEXIS 13, at \*14-15; 98 P.U.R.4th 127, *aff'd* ICC Order, Docket No. 88-0300 (Aug. 23, 1989), 1989 Ill. PUC LEXIS 264, at \*35; 105 P.U.R.4th 353.

MEC is not certain that the ICC will issue such an Order prior to December 24, 2003, and therefore, it may not be authorized by the ICC to implement the required amendments to its NDT agreements by that date. However, MEC hereby commits to provide NRC with any 30 working days prior notice that would be required by the provisions contemplated by 10 CFR 50.75(h)(2) pending ICC approval of the proposed amendments to the NDT agreements. In addition, MEC will implement such amendments upon receiving such approval. Effective December 24, 2003, MEC will maintain its compliance with the other applicable provisions of 10 CFR 50.75(h)(2), such as the restrictions on the use of funds, as required by the rule.

Therefore, in accordance with 10 CFR 50.12(a)(2)(ii), 50.12(a)(2)(iii), 50.12(a)(2)(iv) and 50.12(a)(2)(v), MEC requests a temporary exemption from the requirements in 10 CFR 50.75(h)(2) that its NDT agreements contain the required provisions. MEC requests that this temporary exemption extend until such time as its proposed NDT agreement amendments are approved by the ICC and that MEC is reasonably able to implement the amendments.

10 CFR 50.12 authorizes the Commission, upon application, to grant exemptions from the requirements of the regulations when special circumstances are present. MEC believes that such special circumstances are present here. Specifically, Section (ii), (iii), (iv), and (v) of 10 CFR 50.12(a)(2) apply.

**10 CFR 50.12 (a)(2)(ii)**

*(ii) "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;"*

Application of the regulation is not necessary to achieve the underlying purposes of the new rule, because these purposes will be achieved on a temporary basis by virtue of MEC's commitment to the NRC that it will provide notice as if it were already required by the terms of the NDT agreements. Thus, NRC will receive the same notice as if the NDT agreements had been amended.

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**10 CFR 50.12 (a)(2)(iii)**

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;

MEC has made timely efforts to obtain ICC approval of the required amendments and cannot control the timing of the requested ICC Order. Imposing the relevant requirements of 10 CFR 50.75(h)(2) on MEC before an ICC Order is issued imposes an undue hardship on MEC, because MEC would be subject to the risk of enforcement or other adverse action by NRC (for failure to comply with the rule) or the ICC (for failure to obtain prior approval of the amendments).

**10 CFR 50.12 (a)(2)(iv)**

(iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption;

MEC's commitment to make the required notice contemplated by the new rule provides a benefit to the public health and safety that compensates for the fact that during an interim period its NDT agreements will not include the provisions required by 10 CFR 50.75(h)(2), from which a temporary exemption is sought.

**10 CFR 50.12 (a)(2)(v)**

(v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation;

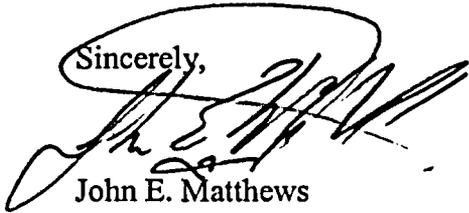
As already noted, MEC made a good faith effort to comply with the regulation by contacting the ICC Staff with proposed language to amend its NDT agreements in late August. Until that time, MEC was awaiting the issuance of NRC guidance to assist in framing the precise terms of the proposed amendments. Further delay in the ICC Staff's review was caused by confusion regarding the terms of the rule, including the exception from the notice requirement for withdrawals to pay administrative costs and fees. This confusion was only resolved through reference to the NRC's Regulatory Guide 1.159, Rev. 1, issued on September 30, 2003. NRC acknowledged this confusion in its recent publication in the Federal Register of a clarifying Direct Final Rule. 68 FR 65386, 65387 (Nov. 20, 2003) ("In order to eliminate any further confusion regarding the present rule language, the NRC is revising the rule language . . ."). In any event, the relief requested is only temporary.

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The proposed exemption: 1) is authorized by law in that no law exists which precludes the actions covered by this exemption request, 2) will not present an undue risk to the public health and safety, 3) is consistent with the common defense and security, and 4) will not have an adverse impact on the environment.

MEC requests your review and approval by December 23, 2003. If the ICC issues an Order approving the proposed NDT amendments prior to that date, MEC will notify the NRC and withdraw this temporary exemption request.

Sincerely,



John E. Matthews  
Counsel for MidAmerican Energy Company

c: NRC Project Manager, NRR – Quad Cities, Units 1 and 2