

April 7, 2004

Mr. Lawrence J. Corte, Manager
Western Nuclear, Inc.
Union Plaza, Suite 300
200 Union Boulevard
Lakewood, Colorado 80228

SUBJECT: SOURCE MATERIAL LICENSE SUA-56, DOCKET 40-1162 - REQUEST TO
CHANGE FINANCIAL SURETY INSTRUMENT FOR SPLIT ROCK SITE,
JEFFREY CITY, WYOMING (TAC L52525)

Dear Mr. Corte:

The U S. Nuclear Regulatory Commission (NRC) staff has reviewed the decommissioning financial assurance documents submitted by Anthony J. Thompson, Counsel, on behalf of the licensee Western Nuclear Inc. (WNI) for the Split Rock Site in Jeffrey City, Wyoming, dated May 30, 2003, supplemented by information dated January 21, 2004. The January 21, 2004, submittal was in response to the staff's August 8, 2003, and November 25, 2003, requests for additional information (RAIs). The documents are intended to assure that funds are available for decommissioning and decontamination activities through a Parent Company Guarantee (PCG) by Phelps Dodge Corporation as a replacement for a surety bond issued by the Antitrust and Indemnity Group.

The January 21, 2004, response to staff's RAI stated that the PCG was submitted as specified in the 1988 "Technical Position on Financial Assurance for Reclamation, Decommissioning, and Long-Term Surveillance and Control of Uranium Recovery Facilities" (Branch Position).

The staff reviewed the submittal for conformance to the Branch Position. The staff found that the PCG does not conform to the Branch Position. The PCG, as submitted, provides for longer periods to provide alternative financial assurance than the periods found in the Branch Position. The PCG also implies that funds may be less than required by regulations in certain circumstances. Therefore, the WNI must make changes as detailed in the enclosed RAI.

If you have any questions regarding this letter, please feel free to contact the Project Manager, William von Till at (301) 415-6251 or by email at rwv@nrc.gov.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html>.

Sincerely,

/RA/

Robert Nelson, Chief
Uranium Processing Section
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Enclosure: Request for Additional Information

Docket No.: 40-1162

License No.: SUA-56

cc: J. Wagner, WDEQ
A. Thompson, Esq
D. Bergman-Tabbert, DOE

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Uranium Processing Section
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A. Thompson, Esq
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*See previous concurrence

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OFC	FCFB		FCFB		FCFB	
NAME	W. vonTill *		B. Garrett *		B. Nelson	
DATE	4/6/04		4/6/04		4/7/04	

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**REQUEST FOR ADDITIONAL INFORMATION
WESTERN NUCLEAR, INC. PARENT COMPANY GUARANTEE**

Introduction:

By letter dated January 21, 2004, Western Nuclear, Inc. submitted a Parent Company Guarantee (PCG) as financial assurance pursuant to Appendix A to 10 CFR Part 40. The letter stated that the PCG was submitted as specified in the 1988 "Technical Position on Financial Assurance for Reclamation, Decommissioning, and Long-Term Surveillance and Control of Uranium Recovery Facilities" (Branch Position).

The staff reviewed the submittal for conformance to the Branch Position. The staff found that the PCG does not conform to the Branch Position. The PCG, as submitted, provides for longer periods to provide alternative financial assurance than the periods found in the Branch Position. The PCG also implies that funds may be less than regulatory requirements in certain circumstances. Therefore, the licensee must make changes as detailed below.

Specific Comments:

1. Revise PCG item Test #2(d)

Item Test#2(d) of the licensee's PCG requires that the parent company must have:

"Assets located in the United States amounting to at least 90 percent of the total assets of at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof." (Emphasis added)

The word "of" should be "or." As stated, the test item implies that only 90 percent of the required assets amounting to six times the cost estimates for all facilities need to be located in the United States. That is incorrect.

Therefore, the licensee must revise its PCG to change "of" to "or" in item Test #2(d).

2. Revise Section 7(c) to remove the words "if any" from the provision to deposit funds to cover long-term surveillance and control

Section 7(c) of the licensee's PCG states:

"In addition, the guarantor shall cover the eventual payment of the amount for long-term surveillance and control, if any, as required by 10 CFR Part 40, Appendix A." (Emphasis added)

Criterion 10 of Appendix A to 10 CFR Part 40 requires the deposit of funds for long-term surveillance and control of a minimum amount of \$250,000 (1978 dollars), with a provision to increase the minimum amount under certain circumstances. No provision is made to reduce the minimum. The underlined words "if any" in Section 7(c) imply that no funds would be deposited under some circumstances. That is contrary to the regulation.

Enclosure

Therefore, the licensee must remove the words “if any” from Section 7(c).

3. Revise Section 9 of the PCG to conform to the time periods stated in the Branch Position for notice and establishment of alternative financial assurance

Section 9 of the licensee’s PCG states:

“The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, it fails to meet the financial test criteria, guarantor shall send within 90 days of the end of the fiscal year, by certified mail, notice to NRC that guarantor intends to provide alternative financial assurance as specified in 10 CFR Part 40 and Appendix A in the name of the licensee. Within 120 days after the end of the fiscal year, the guarantor shall establish such financial assurance if Western Nuclear, Inc. has not done so.” (Emphasis added)

Section 8 of the model language in the Branch Position states that notice shall be sent within 60 days, not 90 days.

Section 8 of the model language in the Branch Position states that alternative financial assurance shall be established within 90 days, not 120 days.

Therefore, the licensee must revise its PCG to reduce the notice period and the period to establish alternative financial assurance to conform with the time periods stated in the Branch Position.

4. Revise Section 16 to reduce to 60 days the period for guarantor to provide for alternative financial assurance if Western Nuclear fails to provide financial assurance

Section 16 of the licensee’s PCG states:

“The guarantor agrees that if Western Nuclear, Inc. fails to provide alternative financial assurance as specified in 10 CFR Part 40 and Appendix A, as applicable, and obtain written approval of such assurance from Nuclear Regulatory Commission (NRC) within 90 days after a notice of cancellation is received by both the NRC and Western Nuclear, Inc., the guarantor shall provide such alternative financial assurance in the name of Western Nuclear, Inc. or make full payment under the guarantee.” (Emphasis added)

The Branch Position provides for a 60 day period, not 90 days, for the licensee to provide and obtain approval of alternative financial assurance.

Therefore, the licensee must revise Section 16 of the PCG to reduce to 60 days the period for guarantor to provide for alternative financial assurance if Western Nuclear fails to provide financial assurance.