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August 9, 2004

Chief, Rules and Directives Branch  
Mail Stop TG-D59  
Nuclear Regulatory Commission  
Washington, DC 20555-0001

Re: NUREG-1577, REV.1

Dear Chief:

I would like to make the following comments concerning the draft supplement to the Standard Review Plan which expands NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance".

First, I would like to commend the Nuclear Regulatory Commission for drafting this revision. This revision will enable the licensee to take advantage of insurance industry capacity that is currently available in the market place to underwrite this type of exposure. This revision will help to ensure that sufficient funds will be available to cover the required decommissioning costs of a nuclear power plant. However, there are several aspects of the draft that I feel should be changed which are set forth below. I believe these changes will benefit the licensee and the Nuclear Regulatory Commission.

The first aspect relates to section 13 which requires that the insurance policy which is used to provide decommissioning funding assurance is provided on a primary insurance basis, and not on an excess insurance basis. The pertinent portion of the draft section states that:

"The policy should not contain a clause to the effect that if the licensee has other valid and collectible insurance applicable to decommissioning, then the decommissioning insurance shall be "excess insurance" over such coverage. Because licensee property insurance (e.g., Nuclear Electric Insurance Limited) may cover decommissioning in certain situations, certainty and timeliness of decommissioning coverage may be impeded by having to resolve which insurance is primary or excess."

The licensee is required to purchase property insurance for its nuclear power plant. The property insurance provides insurance for certain costs that may be incurred due to or arising from certain risks pursuant to the terms, conditions and exclusions of such policy. The decommissioning coverage that is contained within the property insurance coverage is very clear as to what decommissioning costs would be paid by the property insurance policy. The financial assurance decommissioning funding insurance policy could also be very clear that it is excess over the decommissioning coverage which may be required under the property policy and it is primary for all other decommissioning costs. It may be much clearer, if the property policy applied, based upon its terms and conditions, that it provides primary coverage to the extent that it provides any coverage and that the financial assurance decommissioning funding policy provides excess insurance to the property policy, to the extent that the property policy applies, and primary coverage to the extent that the property policy does not provide any coverage.

If the primary/excess portion of the regulation remains as stated in the draft and the decommissioning funding policy is forced to be primary to the property insurance policy, it will create a disincentive for new insurance companies to enter this market as such a company would be at a competitive disadvantage against the existing property insurer (e.g., Nuclear Electric Insurance Limited) for the decommissioning funding insurance. The property insurer would already have been paid a premium by the insured to assume the risk of decommissioning costs under certain circumstances as provided by the property insurance. The property insurer would not have a need to charge for this coverage under the decommissioning funding policy because it was already paid to assume this risk under its property policy. However a different insurer who is new to the market that is attempting to underwrite the decommissioning funding insurance would need to charge a premium for all decommissioning costs, even those costs which would otherwise be paid under the property policy, as the decommissioning funding insurance would be "primary" as the draft stands today. The new insurer would not be able to discount the premium for the decommissioning funding policy by the premium which was already paid under the property policy if the decommissioning funding insurance is required to be primary to all other insurance.

In essence this requirement would cause the licensee to pay twice for the same coverage or it would limit the insurers that would be willing to offer this coverage to the existing property insurers, in either event, removing economic incentive and competition. I do not believe that this was the intent of the draft. This problem can be avoided by allowing the decommissioning funding insurance to be excess of the decommissioning costs which are available under the property insurance.

The second section issue that is of concern is the insurance company financial strength requirements contained in Section 4 Issuer Qualifications. (b). This sections states in pertinent part:

"The issuer of the insurance policy has received a financial strength or safety rating of A- or better from A.M. Best, A- or better from Standard & Poor's, A-3 or better from Moody's, A- or better from Fitch, or B- or better from Weiss Rating, as its most recent, issuer-specific rating."

Realizing the length of time and amount of costs associated with decommissioning a nuclear power plant, it is imperative that the insurer that is providing the decommissioning funding policy have the highest credit rating available in the industry. I believe that the financial standings established in this draft are inadequate when you consider the monetary limits and the length of policy term that is required for the decommissioning funding insurance to fulfill its purpose. It is my opinion that the regulations should require the minimum rating of AA or better.

Additionally, with regard to diversity of risk, I think that the NRC should consider carefully the review of a mutual, captive, or RRG., whether or not such mutual, captive or RRG is insuring one or a number of facilities. The pertinent part of the draft states:

“A mutual, captive, or RRG that can insure more than a single owner’s reactors also may be problematic unless the insurer covers a relatively large number of owners and reactors.”

The NRC may not be provided with adequate protection if a large number of plants needed to be decommissioned at the same time and a mutual, captive or RRG covers a relatively large number of owners and reactors. A mutual, captive or RRG with a large number of owners and reactors as its sole business could be subject to financial distress if there was some event that would have an impact on the nuclear industry, as there is no diversity in its risk pool to support the downturn for this segment. It is more likely that the NRC would have better protection if the insurer of the decommissioning funding insurance has a diversified portfolio of business.

I have extensive experience in providing funded financial assurance insurance programs for landfill closure and post closure care, oil and gas plug and abandonment, and mine reclamation. All of these programs are designed to provide the required financial assurance that money is available to perform the required cleanup at the end of the operating life of the facility. The financial strength on the insurance provider, the diversity of risk of its business and the spreading of this type of risk among insurance providers should be carefully examined to ensure that the objectives of the financial assurance mechanism is fulfilled.

Thank you for giving me the opportunity to express these comments. Please feel free to call me at (212) 458 2992 if you have any questions.

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