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FAX Cover Sheet

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Date & Time: 18 AUGUST 2004
Pages including cover sheet: 14

Comments:

NEI COMMENTS ON NUREG-1577, Rev. 1, 69 FED. REG. 43,278 (July 19, 2004)

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NEI
NUCLEAR ENERGY INSTITUTE

Richard J. Myers
SENIOR DIRECTOR, BUSINESS
& ENVIRONMENTAL POLICY

August 18, 2004

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

Re: Comments on NUREG-1577, Rev. 1, Draft Supplement to Standard Review Plan Decommissioning Funding Insurance for Power Reactors
69 Fed. Reg. 43,278 (July 19, 2004)

Dear Sir:

The Nuclear Energy Institute ("NEI"), on behalf of the nuclear industry,[1] is pleased to comment on the draft Supplement to Standard Review Plan ("SRP") on Decommissioning Funding Insurance for Power Reactors (69 Fed. Reg. 43,278 (July 19, 2004)).

NEI supports the NRC's development of this guidance for the use of insurance as a mechanism for providing reasonable assurance that decommissioning funds will be available when required. Insurance is a method of decommissioning funding permitted by the NRC regulations, but has not yet been developed as a product offered by any insurers (except for coverage involving an accident). The SRP will help prospective insurers understand NRC's requirements and provide this coverage. In addition, the various methods of decommissioning funding allowed by the NRC rules are intended to provide flexibility to licensees on how they provide financial assurance, and facilitating the development of viable decommissioning insurance policies will promote that important goal. Finally, the existence of viable decommissioning insurance may be very important to the next generation of nuclear plants, likely to be developed by merchant generators. For all these reasons, NEI strongly encourages the NRC to issue the guidance.

NEI does have a number of concerns about the draft Supplement to the Standard Review Plan, however. These are discussed in detail in the Enclosure to this letter.

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, nuclear insurers, and other organizations and individuals in the nuclear energy industry.

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NEI strongly urges the NRC to amend the draft Supplement to address these concerns before issuing it in final form.

NEI is aware of two proposals for decommissioning insurance that have been submitted to the NRC. The NRC should endeavor to make the draft SRP as consistent with those proposals as the NRC's regulatory objectives allow, because the two pending proposals represent products that have been structured with considerable effort to balance NRC, tax, insurance and commercial needs. For example, under the Internal Revenue Service's regulations, an insurer must demonstrate that its coverage involves a sufficient transfer of risk in order to be allowed to establish loss reserves offsetting the income that would otherwise be taxable when premiums are received. Thus, a product that proposes simply to return invested premiums and earnings to an insured licensee at the time of decommissioning would not qualify as insurance. An insurer must also structure its coverage and reserves to meet the requirements of the insurance commissioner for the state in which it is licensed. At the same time, an insurer must establish customary and reasonable commercial terms to protect its business interests, including reasonable exclusions and claims management provisions. NEI urges the NRC to recognize that a viable decommissioning insurance product can only be offered if all of these needs are balanced.

More detailed comments are provided in the enclosure to this letter. These comments have been developed in consultation with the sponsors of both decommissioning insurance proposals pending before the NRC. These comments therefore seek to balance the NRC's regulatory objectives with other applicable legal requirements and with commercial needs. If you have any questions on these comments, please contact me at (202) 739-8021.

Once again, we appreciate the opportunity to provide these comments and urge the Commission to adopt criteria that will allow insurance to become a viable decommissioning funding mechanism in the United States.

Sincerely,

Richard Myers

Richard Myers

Enclosure

Enclosure

NEI Comments on Draft Supplement to Standard Review Plan
Decommissioning Funding Assurance for Power Reactors (69 Fed. Reg. 43,278)

The comments below relate to the acceptance criteria in section II of the draft Standard Review Plan ("SRP") and are presented in the order raised by the SRP. The numbers and headings below correspond to those used in the SRP.

II. Acceptance Criteria

The draft SRP states that the name of the policy is much less important than "the certainty of availability of funds." It would be more appropriate to refer to the "degree of certainty" or "reasonable assurance" of the availability of the funds, to avoid any unreasonable suggestion that absolute certainty is required. Absolute certainty cannot be provided for any product qualifying as true insurance and, in fact, is not provided by any other decommissioning funding mechanism. NRC rules themselves require "reasonable assurance that funds will be available for the decommissioning process." 10 C.F.R. § 50.75(a).

1. Amount of Coverage As Related to 10 CFR 50.75(b)(1)

The SRP should recognize and indicate explicitly the acceptability to NRC of insurance offered in combination with other decommissioning funding methods. A combination of funding methods is permissible under the existing NRC regulations. *See* 10 C.F.R. § 50.75(e)(1)(iv). The draft SRP, for example, calls for the policy coverage to provide an amount of coverage not less than the table of minimum amounts in 10 C.F.R. § 50.75(b)(1). 69 Fed. Reg. at 43,278. Clearly, a combination of methods can be used to meet NRC's minimum funding assurance requirements, such as the combination of insurance coupled with the prepayment method, *e.g.*, funds accumulated in the nuclear decommissioning trust funds (NDTs) as proposed by Nuclear Electric Insurance Ltd. (NEIL). Insurance could also be used in combination with the external sinking fund method accumulating additional funds over time (for licensees that qualify to use this method) or along with a parent company guarantee to make up any shortfall in the insurance. When a combination of methods is used, it is the total assurance provided by the combination of methods that must satisfy NRC's minimum funding assurance requirements and not the insurance (or any other single method) in isolation.

The SRP should also recognize that a licensee's decommissioning funding obligation could be based on a site-specific decommissioning cost estimate that is less than the minimum formula amount, if the NRC has approved that lower funding level either through an exemption or, if at the end of the plant life, through acceptance of a site-specific cost estimate in a Post-Shutdown Decommissioning Activities Report

(PSDAR), License Termination Plan (LTP), or Decommissioning Plan (DP). The SRP should recognize these possibilities.

The statement in the draft SRP that "[t]he insurance policy should guarantee the total amount of currently estimated decommissioning costs" (69 Fed. Reg. at 43,278-79) should recognize that a combination of methods may be used. Moreover, this statement goes beyond the NRC regulations, which require only that the funding assurance exceed the formula amounts. While a proposed policy may choose to provide coverage (either alone or in combination with another method) exceeding a current, site-specific estimate, the NRC should recognize that such coverage is not required by the NRC's rules. In addition, the word "guarantee" should be avoided, because it suggests an absolute level of assurance that is inconsistent with the concept of insurance. Providing "reasonable assurance" of a level of funding is the appropriate standard.

The draft SRP states that the "amount of coverage should be a specific dollar number and not be a schedule or formula contingent on projected earnings under the policy." Id. at 43,278. This sentence should state that "the minimum amount of coverage should be a specific dollar amount." There could be situations where a policy a certain amount meeting NRC requirements, but offers additional coverage in certain circumstances. For example, NEIL's proposed policy increases the policy limit if a covered unit renews its operating license and operates beyond the original license expiration date. Alternatively, a policy may provide for reductions in the policy limits under certain circumstances pursuant to a pre-determined methodology. As long as the base coverage or minimum amount of coverage (and any other funding mechanisms provided by the licensee) meet the NRC minimum requirements, the NRC should not impose any constraints on provisions that allow increases in coverage.

The draft SRP states that if a policy covers both NRC and non-NRC costs (e.g., site restoration costs and spent fuel management costs), they should be separately identified. 69 Fed. Reg. at 43,279. This proposed position is problematic for a number of reasons. First, creating sub-limits for separate categories of costs would adversely affect risk transfer allocations required to demonstrate that the coverage constitutes insurance for tax purposes. Second, providing separate limits would be administratively burdensome and disadvantageous. Because site-specific decommissioning cost estimates are not exact, establishing sub-limits based on estimates for each of these categories of costs may prevent an insured licensee from obtaining the maximum value of the insurance if the actual cost allocation later differs from allocations predicted in the prior estimates. For example, for a policy that otherwise had an overall limit of 100, the creation of sub-limits might result in 80 for NRC costs and 20 for non-NRC costs. If actual costs were 85 and 10, the creation of sub-limits would result in insurance coverage of just 90 and a shortfall of 5, whereas without sub-limits the insurance would pay all 95 in costs.

In addition, licensees would be required to implement a system of classifying and allocating costs, which would increase the administrative expense. Such accounting is not required for the licensees currently using trusts to pay for ongoing decommissioning, so it is unclear why such limitations should be imposed if decommissioning is paid through insurance. Further, establishing a separate coverage for non-radiological decommissioning costs (site restoration costs) is unnecessary. These costs are relatively small compared to the radiological decommissioning costs. With the exception of costs to conduct initial non-radiological site surveys or other site characterization, such costs are generally incurred after completion of radiological decommissioning (*i.e.*, buildings are decontaminated to NRC release limits before they are demolished, and grading and re-vegetation of the site occurs after structures are demolished).

As an alternative to creating sub-limits, NRC could require simply that insurance provide a priority for NRC's basic radiological costs as defined in 10 C.F.R. § 50.75. For example, a policy should be acceptable if it provides that these NRC costs have priority and that payment of claims for other costs would only be made if such categories of costs are specified in a PSDAR, LTP, DP or other similar submittal that has been subject to NRC review.

The draft SRP states that the amount of coverage should be capable of being adjusted. Id. While a licensee is responsible for periodically adjusting its funding assurance to maintain compliance with NRC requirements, the need for the licensee to adjust its level of funding assurance when necessary should not be translated into a requirement for an automatic adjustment to the insurance policy limit. For example, in the case of NEIL's proposed insurance, compliance with NRC's funding requirements would be provided by the combination of insurance and the qualified trust funds, and any periodic adjustment to meet NRC requirements after purchase of the insurance would be accomplished by the licensee by additional contributions to the trust funds (or by any other method permitted by NRC's regulations). Even where insurance is offered as the sole funding mechanism, any necessary adjustment could be provided by the licensee by purchasing additional insurance, rather than by some automatic increase by the insurer in the policy limit. Moreover, automatic adjustment of the policy limits would likely present tax problems. For example, an automatic escalation of the policy limit based on the earnings on the invested premiums likely would not provide sufficient risk transfer for the coverage to qualify as insurance for tax purposes.

The draft SRP states that deductibles may be called a retention, a self-insured retention, self insurance, "or other euphemism." 69 Fed. Reg. at 43,279. Euphemism means the substitution of an inoffensive term for one that is considered explicitly offensive. Since there is nothing offensive or wrong about deductibles, this choice of words is inappropriate.

3. Scope of Coverage

The draft SRP states that the NRC should "[v]erify the scope of coverage, which should be for NRC (§ 50.2) defined decommissioning costs." 69 Fed. Reg. at 43,279. The draft SRP should call for verification that the scope of coverage "includes" NRC defined decommissioning costs, but should not preclude coverage for additional costs incurred after a plant permanently ceases operation.

With respect to the scope of coverage, the draft SRP calls for review of any policy limit that defines covered decommissioning costs only as those incurred by reason of work performed because "such a limit is inconsistent with the payment of funds into the standby trust prior to decommissioning costs being incurred." *Id.* This guidance is fundamentally inconsistent with the concept that insurance is an indemnity to pay for losses that have been incurred. Moreover, this could present a significant impediment to obtaining state insurance commissioner approval or the necessary determination from the IRS that arrangements constitute insurance for tax purposes.

The guidance appears to contemplate that the insurance policy would pay a fixed amount into a standby trust upon commencement of decommissioning. Such a fixed payment obligation would likely not result in a sufficient risk transfer to qualify the product as insurance for tax purposes.[1] Moreover, it is commercially unreasonable to expect any insurer to pay claims without regard to whether the costs have been incurred and are covered by the Policy. Consequently, in order to make insurance the viable method intended by NRC's regulations, the SRP must recognize and allow a claims payment process where an insurer promptly reimburses the licensee for insured costs actually incurred and as they are incurred.

Consistent with the proposed Acceptance Criterion 21, NRC's guidance should focus on the need to assure that the mechanisms in place for payment of claims will provide sufficient and timely payments to the trust (or directly to vendors as directed by the Trustee) so that bills are paid in a timely manner when they become due. Modern technology such as email communications, electronic signatures, and electronic transfers of funds, make it relatively easy to arrange for the instantaneous, timely remittance of funds. Notably, an insurer will have every incentive to assure that vendors' bills are paid on a timely basis, because failure to do so will increase vendors' charges and therefore the cost of decommissioning, all to the disadvantage of the insurer.

Also with respect to the scope of coverage, the draft SRP states that legal fees related to decommissioning must be covered by decommissioning insurance if

1 The transfer of investment risk is not sufficient to qualify the product as insurance.

incurred. This guidance is too broad and does not appear to be necessary to meet the NRC's regulations and objectives. For example, having the insurance pay for the legal fees associated with commercial litigation between the licensee and a decommissioning contractor may not serve to complete actual radiological decommissioning work, but rather may only reduce the funds available to perform actual work. Depending upon the circumstances, insuring legal fees could foster protracted litigation and could subject an insurer to a significant liability that cannot be priced when the policy is issued. Thus, mandating that insurance pay legal fees would be counter-productive, because it could make fewer insurance proceeds available for decommissioning, rather than more. In contrast, the insurer will be economically motivated to reduce the overall cost of decommissioning, and therefore, the insurer is in the best position to oversee the judgment as to whether investing funds in litigation with vendors is likely to reap sufficient returns to outweigh the costs. An acceptable policy should therefore provide that the insurer may authorize legal expenses for vendor litigation, but such expenses are not recoverable under the policy unless they are pre-approved by the insurer.

Licensees may recognize that certain legal costs associated with the administration of trust funds, the payment of claims, and obtaining required regulatory approvals (*e.g.*, the costs of participating in an NRC adjudicatory hearing on approval of the LTP) are part of the decommissioning process. These types of costs may be included in an insured's site-specific cost estimates, and therefore, these costs could be within the scope of the insurance coverage, if they are identified and capable of being estimated as part of the underwriting process. At a minimum, the SRP should distinguish between legal fees associated with commercial litigation or tort claims and legal fees incurred to obtain NRC approvals of a license termination plan.

4. <u>Issuer Qualifications</u>

The draft SRP states that special terms and conditions are appropriate for insurers domiciled outside of the U.S. It is unclear whether "domicile" refers to where the insurer is incorporated or where it is licensed and has its principal place of business. If the insurer is licensed and has its principal place of business in the United States, there should be no need for any special terms or conditions, even if the insurer is incorporated overseas (for example, in Bermuda, as is common). If the insurer is licensed by a State, it will be subject to regulation by that State's insurance commissioner and will be subject to the jurisdiction of U.S. courts. NEIL, for example, is incorporated in Bermuda but licensed by and has its principal place of business in Delaware, and it is currently relied on to provide the property insurance required under 10 C.F.R. § 50.54(w). In fact, the NRC preempted conflicting state laws so that Texas municipals could purchase insurance from NEIL. 52 Fed. Reg. 28,963 (Aug. 5, 1987).

The draft SRP also states that authorities of the State where the nuclear plant is located must license the insurer. This position is also unnecessary and inconsistent with insurance regulation. For example, insurance may be issued by a risk retention group (RRG) that is organized and chartered in one state in compliance with the Federal Liability Risk Retention Act of 1986. 15 U.S.C. § 3901 *et seq.* Such an RRG does not become licensed in other states, but rather is required to meet certain reporting requirements. 15 U.S.C. § 3902(d). Requiring licensing in each state is inconsistent with the federal statutory scheme for RRGs. Yet, NRC's guidance itself acknowledges that an RRG may be an acceptable issuer of decommissioning funding insurance.

In addition, many States exempt insurance companies from licensing requirements if the insurance is issued to an "industrial insured" or if an insured procures insurance independently outside of the jurisdiction. Thus, for example, NEIL, which provides the property damage coverage for U.S. reactors, is licensed only in Delaware and Bermuda, and provides coverage in certain other jurisdictions pursuant to statutory exemptions. In the event such an exemption is not available, NEIL requires its insured to purchase and accept delivery of its policy in Delaware. If a licensee proposes to use decommissioning insurance, it is appropriate for the NRC to seek confirmation that the insurance is offered, issued, and delivered properly, but a requirement for licensing in every jurisdiction would simply subject the insurer to unnecessary and duplicative regulation in a multitude of jurisdictions.

The draft SRP states that a captive insurer that covers only a single owner's reactors will be problematic, because such coverage would be synonymous with self insurance, which the NRC regulations do not permit. 69 Fed. Reg. at 43,279.[2] The question of whether or not an insurer for a single owner's plants is acceptable should be decided based upon whether or not there is adequate risk diversification for the proposed insurance company. Such coverage would not be the same as an internal reserve, which the NRC regulations prohibit, because the coverage would be provided by a separate company, regulated by a State's insurance commissioner, and backed by invested assets meeting the State's solvency requirements. Moreover, the funds would be available to the insured licensee only when payable as a claim under the policy. Thus, unlike an internal reserve, the funds would not be commingled with the licensee's assets or controlled by the licensee. Because the funds would be maintained in a separate insurance company, they would be outside the reach of creditors in the event of the licensee's bankruptcy, and thus, the funds held in the single owner insurance company may well be better protected and preserved to provide assurance for decommissioning, than existing NDTs, which are only protected by the bankruptcy court's mandate to act in the public interest.

2 This statement is not entirely correct in that the NRC regulations do allow for self-guarantees. *See* 10 C.F.R. § 50.75(e)(1)(iii)(C).

The draft SRP states that a mutual, captive or risk retention group (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." This position should be clarified to address specifically the issue at hand, whether the insurer will have adequate financial resources. Whether an insurer is organized as a stock or mutual company is not related to its spread of risk or the adequacy of its financial resources. For example, FM Global and Liberty Mutual are two of the world's largest insurers, notwithstanding that they are organized as mutuals. Mutual insurers should be permitted if they demonstrate that risk is sufficiently pooled and diversified, or that they have adequate resources. Such a demonstration will depend on a number of factors and should be made on a case-by-case basis. NRC can properly rely upon actuarial analyses conducted to support a particular insurance program, as these same analyses will be reviewed and evaluated by at least one state insurance commissioner in approving the insurance program.[3]

The draft SRP states that a group captive, RRG or mutual insurer is acceptable if the IRS has issued a ruling finding that the premiums paid by the insurer will be considered deductible for tax purposes, and if the issuer has received certain investment ratings from rating agencies. These criteria are inappropriate.

A private letter ruling may be important to a new captive insurer to protect itself against unintended tax liability, but it is not required. NRC need only be concerned that there is a reasonable basis for the tax treatment that is assumed in the economic analyses supporting the proposed insurance company. Once again, NRC can rely on the fact that a state insurance commissioner will also review and evaluate those same assumptions. Moreover, a private letter ruling is not an indicator of the insurer's financial strength. To the contrary, the private letter ruling is primarily an indication that the insurer is assuming sufficient risk for its product to be considered insurance (*i.e.*, the IRS is more likely to issue the requested ruling if the risk assumed by the insurer is high). Finally, deductibility of insurance premiums is not a requirement for insurance to be a viable method of providing financial assurance for decommissioning.

With respect to the proposed requirements regarding financial ratings, the NRC's criteria would likely effectively foreclose any newly formed insurance company from offering decommissioning insurance. Rating agencies do not routinely assign a rating to a newly formed entity. Rather, rating agencies typically require several years worth of earnings history before providing ratings. Moreover, it is not clear

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3 The real issue relating to insurers organized as mutuals, captives and RRGs is the statutory requirement that they be owned by their insureds, which may be a problem for certain municipals that may not own stock in a private corporation or become a member of a mutual.

why an A.M. Best rating should be required for a new decommissioning funding insurer. For example, NEIL has provided billions of dollars of insurance coverage in the nuclear industry in order to meet NRC requirements (*e.g.*, 10 C.F.R. § 50.54(w)) throughout the 1980s and 1990s, but it did not receive an A.M. Best rating until 1998, 18 years after it began offering insurance. Accordingly, the NRC should delete both of these criteria, and should instead evaluate each new insurance proposal on a case-by-case basis, with considerable deference given to the solvency requirements of the insurance commissioner of the State in which the insurer is licensed.

5. Trustee Must be Acceptable to NRC
6. Covered Licensee(s)
7. Licensee's Regulatory Obligations are Reason for Policy
8. Policy Term
11. Beneficiary
12. Bankruptcy or Insolvency of the Insured
14. Changes
15. Designated Agent
17. Copies
20. Assignment

Several Acceptance Criteria are proposed under 5, 6, 7, 8, 11, 12, 14, 15, 17, 20, regarding various policy terms. These criteria appear to be appropriate.

9. Cancellation/Termination and Non-Renewal
10. Automatic Payment Prior to Cancellation/Termination/Non-Renewal

The draft SRP specifies certain notice and payment requirements for cancellation or termination. The draft SRP should clarify that these provisions are inapplicable to a policy that cannot be cancelled.

The draft SRP states that the policy must provide for payment of the "full face amount" in the event that a policy is canceled, terminated or not renewed and the licensee fails to provide an acceptable substitute. The SRP should recognize that an insurance policy may specify several face amounts that apply in different situations, including a face amount applicable if a policy is terminated because of non-payment of premiums, material breach, or fraud. The SRP should clarify that it is the applicable face amount that would be paid to a standby trust in the event that a policy is terminated without an acceptable substitute, and that the acceptability of such a face amount would be a matter that the NRC would determine when approving an initial policy. Such a determination would depend on the circumstances in each case when the policy is issued, including the amount of funding assurance provided by other combination methods (*e.g.*, money remaining in the licensee's decommissioning trusts after payment of premiums).

13. Primary, Not Excess, Insurance

The draft SRP states that the policy should not contain a clause that makes the coverage "excess insurance" over other coverage, because the timeliness of coverage may be impeded by having to resolve which coverage is primary or excess. This guidance is inappropriate and should be deleted. Insurance policies specify whether coverage is primary or excess specifically to eliminate any need to resolve which coverage applies. As long as the primary and excess coverages are clearly delineated, there should be no NRC concern. Further, specifying whether coverage is primary or excess is necessary in order to determine the premiums for the insurance. Thus, these provisions are commercially necessary.

Moreover, there would be no difficulty in determining when NEIL's decontamination liability, decommissioning liability and excess property insurance ("NEIL Property Policy") applies, and when a proposed decommissioning insurance policy applies. The NEIL Property Policy does not provide any coverage for decommissioning unless the permanent cessation of operations is caused by accidental property damage. In the event that the NEIL Property Policy does apply, it pays for the shortfall in the Trust Fund, *i.e.*, the difference between the amount estimated at policy inception to meet the decommissioning costs and the amount in the Trust Fund when the loss is payable. Once the amounts received under the NEIL Property Policy have been exhausted, payments will start under the proposed decommissioning insurance policy, as additional decommissioning expenses are incurred.

16. Authorized Signatures

The draft SRP calls for signatures to be notarized. Notarized signatures are not customary business practice, and this is an unnecessary administrative burden. It should be sufficient that the policy be signed by an officer or senior manager from each company, each with authority to bind their respective company.

18. Policy Must Conform to Applicable State Laws

The draft SRP calls for an opinion letter that states that the policy conforms to applicable state law. Obtaining opinions of counsel is an unnecessary burden, because the state insurance commissioners assure compliance with state laws. Further, the NRC should recognize that many states do not regulate every form of policy issued nor do states regulate all insurers, insurance transactions or nature of risks. While we believe that an opinion letter would be unnecessary given the level of review a utility will provide any purchase of the proposed decommissioning policy, if required, an opinion letter should state that the policy does not violate applicable state law, rather than stating it conforms to such law.

19. State Public Commission Approval or Non-Objection

The draft SRP states that for electric utility licensees with access to non-bypassable charges, the licensee's state public utility commission must have approved the use of the insurance policy or raised no objection. It is unclear why such an approval is necessary. If the insurance, or the insurance coupled with amounts remaining in decommissioning trusts, satisfies NRC's decommissioning funding requirement, there should be no need for any additional assurances from a State PUC. Moreover, in a deregulated state where a non-bypassable charge may exist, State PUCs may no longer have any authority over the utility's decommissioning trust funds, or the methods that the utility uses to satisfy the NRC's requirements. Typically, a non-bypassable charge will exist where a previously regulated utility has transferred its generating capacity into a deregulated Genco, and has been granted a non-bypassable charge as part of that restructuring. In such circumstances, the Genco will be selling its power in the wholesale market, and thus it may no longer be subject to the PUC's jurisdiction. It would therefore be inappropriate for the NRC to require state PUCs to approve the proposed insurance where they have no jurisdiction to do so. The NRC's proposal would also create a potential timing issue. If a State PUC approval were necessary, the PUC might seek some assurance that the insurance is acceptable to the NRC before granting its approval. If the NRC will not provide this assurance until the PUC acts, the regulatory approvals may be stalemated, and the use of the insurance foreclosed. Accordingly, we strongly recommend that the NRC base its approval solely on whether the insurance meets NRC requirements, and leave any other approvals that may be required to other agencies.

21. Proceeds Payable to a Decommissioning Trust

The draft SRP states that the NRC's decommissioning regulations contemplate that decommissioning payments will be made from the trust, and not by the insurer, so the insurer must timely transfer ample funds to the trust, if not all of the funds covered by the policy at once, on a schedule consistent with access to the funds allowed by § 50.82(a)(8). 69 Fed. Reg. at 43,281. As previously discussed in these comments, the draft SRP should recognize the commercial requirements of an insurer. Insurance covers incurred losses covered by the policy, and it is commercially unreasonable to require or expect an insurer to make a lump sum payment before any costs are actually incurred, and without any determination whether they are within the scope of the coverage. Consequently, the draft SRP should allow a normal claims process, where claims are submitted as losses are incurred, promptly assessed, and then paid by the insurer. The draft SRP also states that "actual payment of claims (*i.e.*, cutting and sending checks) may best be performed through the trust." *Id.* There is no reason why an insurer would not be able to process claims as promptly as a TOrustee. Moreover, the payment process could be expedited if the insurer were permitted to pay claims directly to the licensee or vendors. In order to expedite payments, the NRC should allow such direct payment when approved in advance by the Trustee.

22. Role and Rights of the Insurer

The draft SRP states that the insurer must invest all NRC decommissioning funds transferred from prepaid funds or from an external sinking fund, and all earnings thereon, consistent with the prudent investor standard. While this is generally appropriate, the draft SRP should clarify that the standard of care for investments that should apply is *either* the standard imposed by a PUC or State insurance commissioner, *or* where no such standard applies, the prudent investor standard. This approach, which avoids unnecessary dual regulation of the fund investments, is the model adopted for the investment standard for NDT's held by non-electric utilities pursuant to 10 C.F.R. § 50.75(h)(1)(i)(B).

This Acceptance Criterion also appears to recognize that an insurer can play a legitimate and useful role in claims management during decommissioning. An insurer will likely have experience with the decommissioning of multiple sites that can assist making decommissioning more efficient and cost-effective. Moreover, because the insurer has a strong economic incentive to assure that decommissioning is conducted cost-effectively, the insurer will play a useful role as an additional watch-dog throughout the plant decommissioning. In the end, this will both help assure that decommissioning projects are completed within the policy limits, and that funds in the insurance company are preserved for payment of claims for other facilities.

23. The Standby Trust Must Be Acceptable to the NRC

In the section of the draft SRP indicating that the standby trust must be acceptable to the NRC, the NRC remarks that qualified funds are not likely to be used because of IRS limitations. This statement should be deleted, because it is unnecessary and may be incorrect. Where decommissioning insurance is purchased using qualified funds, the IRS may require that any proceeds from such insurance must be paid back to the qualified trust. NRC should avoid prejudging IRS's treatment of this issue.