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**MICHIGAN PUBLIC SERVICE COMMISSION
FAX MEMORANDUM**

Date: October 18, 2004

To: Chief
RDB
U.S. Nuclear Regulatory Commission
Fax #: (301) 415-5144

From: Michigan Public Service Commission
Contact: Greg R. White
(517) 241-6188

Pages: 4 – Including Cover

Subject: Comments of the Michigan Public Service Commission 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)

7/19/04
69FR 43277
⑦

The following are the comments of the members of the Michigan Public Service Commission on NUREG-1577, Rev. 1, Draft Supplement to Standard Review Plan Decommissioning Funding Insurance for Power Reactors. Formal copies will be submitted this afternoon in the appropriate format and to the proper recipient.

We appreciate this opportunity to offer these comments for your consideration.

Please let me know if you have any questions concerning this matter. Thank you.

E-RDS-ADM-03

Call - M. DUSANIWSKY'S (MFDI)

Templates ADM-013



Jennifer M. Granholm
GOVERNOR

STATE OF MICHIGAN
PUBLIC SERVICE COMMISSION
DEPARTMENT OF LABOR & ECONOMIC GROWTH
DAVID C. HOLLISTER
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J. Peter Lark
CHAIR

Robert B. Nelson
COMMISSIONER

Laura Chappelle
COMMISSIONER

October 18, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
U.S. 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 Michigan Public Service Commission (MPSC) appreciates the opportunity to comment on the draft Supplement to Standard Review Plan (SRP)-NUREG 1577, on Decommissioning Funding Insurance for Power Reactors. The use of insurance for decommissioning funding is permitted under NRC's regulations and it has been considered several times over the years, but has not been used in the past because of concerns over the reasonable assurance that decommissioning funds would be available when required. The MPSC is aware of recent development of a new insurance product, which may be of future assistance to the nuclear industry for decommissioning funding requirements.

The MPSC believes that before the NRC takes up its time in providing guidance on the use of insurance mechanisms to fund decommissioning that a decision from the IRS on how the insurance programs will be treated for tax purposes is critical. Without a favorable tax ruling from the IRS the MPSC does not believe that the use of insurance products to fund decommissioning will be beneficial to the utility companies. If a favorable tax ruling is granted by the IRS then the MPSC recommends that the NRC carefully consider the development of proposed insurance mechanisms.

The recent decommissioning funding insurance proposals, which have been submitted by insurers and other parties to the NRC as a potential source of decommissioning funding requirements, demands that the NRC carefully consider the issuance of guidelines for the use of insurance as a mechanism for decommissioning funding of all nuclear plants. However, it appears to the MPSC that the recent interest of insurance products to fund decommissioning is more germane to nuclear plants that are operating in states where deregulation of generation has occurred. States that continue to regulate generation may be best served by the continued

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funding in qualified and non-qualified trust funds by customers benefiting from the service provided by the regulated utility owner.

The MPSC will provide comments on two areas of concern presented in the SRP guidance criteria, which correspond to the numbers and headings used in the SRP-NUREG-1577. The MPSC has not evaluated current insurance proposals sufficiently to make an evaluation of such products.

4. Issuer Qualifications

The SRP states that the insurer must be "licensed" by authorities of the State where the relevant nuclear plant is located to transact the business of insurance. The MPSC recommends that it become mandatory that an insurer has its principal place of business in the United States and that it is incorporated in the United States. The MPSC believes that the preferred method is to have each insurer licensed in the State where the nuclear plant is located. The State of Michigan does require an insurer to be licensed in Michigan, before it can provide an insurance product (MCL 500.424). If insurers are not required to be licensed in each State it is most likely that insurers will seek out the most favorable State to be licensed in. Someone has to take responsibility of the licensing for the insurer. If the insurer is required to be licensed in only one State there would have to be some federal statutory exemption that would preempt conflicting State laws in States that do require licensing. The NRC may become the agency that would have to take responsibility that the insurance is offered, issued and delivered properly. The MPSC does not think that it is duplicative regulation to subject each insurer to licensing requirement in the State where the nuclear plant is located. In fact it is prudent that every State jurisdiction would want to license an insurer of a product where adequate protection of public health and safety is involved and the dollars have come from the customers under that States regulatory jurisdiction.

The NRC has requested comments on the proposed guidance with respect to a risk retention group (RRG) or mutual insurer being acceptable. One of the proposed requirements is in regard to the financial ratings of the insurer. Most of us are familiar with the credit ratings of our regulated utilities and the agencies of Standard and Poor's, Moody's and Fitch's that provide such rating. The financial credit ratings, which are provided by these agencies, provide comfort in the financial strength or health of that utility. The licensing of an insurer by each State may address some concerns about the solvency of an insurer, but does not alone demonstrate the financial strength or safety rating. A new decommissioning funding insurer should be required to provide a satisfactory rating by a rating agency before it is allowed to begin offering insurance. No State desires to risk critical decommissioning funds to an insurer that may not be able to meet future obligations. There should be some financial standards established, in addition to just a license requirement.

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19. State Public Service Commission Approval or Non-objection

A State Commission approval or non-objection for the use of an insurance policy is appropriate in accordance with current and future nuclear decommissioning funding policy. The State Public Service Commissions should not be shut out of the process, which involves adequate protection of public health and safety under its jurisdiction, an area that states are well positioned to provide. State PUC review of the insurance policy is appropriate for the protection of ratepayers subject to its jurisdiction. In the certification pursuant to Section 33(a) (2) of the Public Utility Holding Company Act of 1935 certification by the State PUC was mandatory to qualify for the exemption. The State PUC has to certify that it had authority and resources to protect utility ratepayers and that it intended to exercise that authority. The MPSC has authority over the decommissioning trusts of the nuclear plants under its jurisdiction since they were started and it intends to maintain that authority for the purpose of issuing a potential new decommissioning product. The State PUC's have a commitment to their utility customers and they should not be foreclosed from a process that would affect them.

In summary, if the IRS provides a favorable tax ruling for the use of insurance policies and the NRC sees merit in allowing an insurance mechanism to be used for the funding of nuclear decommissioning the MPSC urges the NRC to continue allowing each State PUC to make the final decision on whether it will allow its utilities to fund nuclear decommissioning with an insurance policy.

We hope the MPSC comments are timely and thank-you for the opportunity to comment and your consideration.

Sincerely,



J. Peter Lark, Chair



Robert B. Nelson, Commissioner



Laura Chappelle, Commissioner