

June 15, 1999

The Honorable Fred Thompson, Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the statutory obligation to respond to the recommendations by the General Accounting Office (GAO) within 60 days of receipt, I hereby submit our responses to the recommendations made by the GAO in its report entitled "Nuclear Regulation - Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants." Specific responses to GAO findings, conclusions, and recommendations are presented in the enclosure.

As indicated in Enclosure 1, the Nuclear Regulatory Commission (NRC) believes that, in general, the findings and conclusions of the GAO report are misleading, overstated, and erroneous primarily because the report is based on dated information and improper consideration of several key factors. Specifically, the GAO report relies on data that has substantially changed since 1997, a fact which GAO notes in Appendix I of its report, but does not fully consider in its findings and conclusions. The NRC believes that, if GAO had access to data that the NRC recently obtained from licensees, some of its findings and conclusions would likely have changed. Based on our review of the data, the NRC has concluded that all licensees are on track to provide necessary funds for decommissioning commensurate with the NRC's regulations and are thus in compliance with NRC's decommissioning funding assurance regulations. I respectfully call your attention to the NRC's conclusion on page 5 of Enclosure 1 that, after completing our review of the data, the NRC has found no instances of unacceptable levels of assurance. Nonetheless, should the NRC find problems with licensee compliance or with the adequacy of rate regulatory oversight, the Commission will take further action, as necessary.

I can assure you that, as discussed in Enclosures 1 and 2, the NRC has taken extensive action to ensure that adequate funds for decommissioning nuclear power plants are available when needed. In 1988, the NRC issued a final rule that required power reactor licensees to set aside funds or otherwise provide assurance of decommissioning funds. In 1995, recognizing the impact that deregulation and restructuring in the electric industry could have on decommissioning funding, the NRC initiated a comprehensive reevaluation of its policies and regulations in this area. This reevaluation culminated in a final policy statement on the financial assurance requirements for decommissioning nuclear power reactors in 1998, and a final

standard review plan on power reactor licensee financial qualifications and decommissioning funding assurance in 1999. The Commission is confident that the regulations covering both the amount of decommissioning funds and the allowable assurance mechanisms for decommissioning are adequate to ensure sufficient funding for decommissioning.

Sincerely,

/s/ Shirley Ann Jackson

Shirley Ann Jackson

Enclosures:

1. NRC Comments on Government
Accounting Office Report
2. Chronology of Rulemaking & Regulatory Actions
3. Standard Review Plan on Power Reactor Licensee
Financial Qualifications and Decommissioning
Funding Assurance

cc: Senator Joseph I. Lieberman

June 15, 1999

The Honorable Dan Burton, Chairman
Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In accordance with the statutory obligation to respond to the recommendations by the General Accounting Office (GAO) within 60 days of receipt, I hereby submit our responses to the recommendations made by the GAO in its report entitled "Nuclear Regulation - Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants." Specific responses to GAO findings, conclusions, and recommendations are presented in the enclosure.

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cc: Representative Henry Waxman

June 15, 1999

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands,
Private Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the statutory obligation to respond to the recommendations by the General Accounting Office (GAO) within 60 days of receipt, I hereby submit our responses to the recommendations made by the GAO in its report entitled "Nuclear Regulation - Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants." Specific responses to GAO findings, conclusions, and recommendations are presented in the enclosure.

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cc: Senator Bob Graham

June 15, 1999

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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cc: Representative Ralph M. Hall

June 15, 1999

The Honorable David M. Walker
Comptroller General of the United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Walker:

In accordance with the statutory obligation to respond to the recommendations by the General Accounting Office (GAO) within 60 days of receipt, I hereby submit our responses to the recommendations made by the GAO in its report entitled "Nuclear Regulation - Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants." Specific responses to GAO findings, conclusions, and recommendations are presented in the enclosure.

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June 15, 1999

The Honorable Jacob J. Lew
Director, Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lew:

In accordance with the statutory obligation to respond to the recommendations by the General Accounting Office (GAO) within 60 days of receipt, I hereby submit our responses to the recommendations made by the GAO in its report entitled "Nuclear Regulation - Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants." Specific responses to GAO findings, conclusions, and recommendations are presented in the enclosure.

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June 15, 1999

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

In accordance with the statutory obligation to respond to the recommendations by the General Accounting Office (GAO) within 60 days of receipt, I hereby submit our responses to the recommendations made by the GAO in its report entitled "Nuclear Regulation - Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants." Specific responses to GAO findings, conclusions, and recommendations are presented in the enclosure.

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The Honorable John D. Dingell
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Dingell:

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The Honorable Ralph M. Hall
United States House of Representatives
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ENCLOSURE 1

NRC COMMENTS ON U.S. GOVERNMENT ACCOUNTING OFFICE REPORT, "BETTER OVERSIGHT NEEDED TO ENSURE ACCUMULATION OF FUNDS TO DECOMMISSION NUCLEAR PLANTS"

On May 3, 1999, the U.S. General Accounting Office (GAO) issued a final report, "Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants." This report evaluated information that was available from licensees' annual financial statements and other sources through the end of 1997. The NRC believes that, in general, the findings and conclusions of the GAO report are misleading, overstated, and erroneous primarily because the report is based on dated information and improper consideration of several key issues. Also, the GAO report relies on data that has substantially changed since 1997, a fact which GAO notes in Appendix I of its report but does not fully consider in its findings and conclusions. The NRC believes that, if GAO had access to data that the NRC recently obtained from reports from licensees submitted as of March 31, 1999 (see response to issue 1), some of its findings and conclusions would likely have changed. Further, on March 26, 1999, the NRC submitted comments on the GAO's draft report, which GAO notes but did not fully address. We reiterate and amplify these comments. We have summarized the GAO report's principal findings and conclusions and provide the NRC's response in turn:

1. The GAO report states that, under its baseline assumptions using 1997 data, 36 of 76 power reactor licensees were not funding their decommissioning trusts at a sufficient rate to ensure that decommissioning funds will be available when their plants permanently shut down. This number dropped to 15 licensees with adjustments in funding levels that were made after 1997. In the aggregate, GAO found that the NRC's power reactor licensees had collected approximately \$16 billion toward a goal of \$30 billion, with \$14 billion remaining to be collected, in present value terms at the end of 1997. (GAO report, pps. 4 to 5.)

NRC Response:

The NRC understands that GAO did not have access to data from the decommissioning funding status reports required for the first time by the September 22, 1998, final rule. The NRC received these reports as of March 31, 1999. Based on these status reports, as of December 31, 1998, power reactor licensees have on deposit approximately \$22.5 billion in external decommissioning trusts fund accounts. The total needed to decommission the radiological portion of power plants, based on the generic formulas in 10 CFR 50.75(c), is approximately \$31.9 billion, which the NRC requires to be available when plants permanently shut down. (GAO appeared to place emphasis on the fact that the NRC does not require assurance for non-radiological decommissioning costs. These costs are not included in the aggregate cost estimate as they are beyond the NRC's mandate to protect public health and safety from the potential effects of byproduct, source, and special nuclear materials.) Thus, in the aggregate, licensees have collected about 70 percent of the funds currently estimated to be needed for decommissioning using the NRC's generic formulas in 10 CFR 50.75(c), as compared to about 53 percent using the GAO's findings. The NRC believes that these more recent results indicate that licensees are significantly further along in their collections than GAO findings indicate. Additionally, the NRC notes that Appendix I of the GAO report apparently

includes more recent data. However, this data is not fully reflected in the findings and would have been expected to change GAO's conclusions significantly. (As described more fully in the response to issue 4, power reactor licensees have been allowed to collect funds over the licensed operating life of the plant, an approach that received thorough public comment in rulemakings completed in 1988 and 1998 (see Enclosure 2.))

2. According to GAO, the problem of underfunding is likely to be further exacerbated by the advent of economic deregulation of the electric utility industry, because increased competition will cause some plants (26 units, according to one study upon which the GAO report relied) to shut down prematurely before they have completed decommissioning funding. (GAO report, p. 5)

NRC Response:

As the NRC recognized several years ago, some plants may shut down prematurely as a result of economic pressures (e.g., the Trojan plant in Oregon, the Maine Yankee plant, the Connecticut Yankee plant, and the San Onofre Unit 1 plant in California). Consequently, substantial changes to NRC policies and regulations were initiated in 1995 (see Enclosure 2) to address the connection between economic deregulation and safe operation and decommissioning of nuclear plants. To date, 19 power plants have been shut down prematurely, most of them for economic reasons. None of the licensees of these plants had accumulated all necessary decommissioning funds at the time the plant was shut down. However, each of them has subsequently obtained all funds necessary or has obtained a commitment from its rate regulator (i.e., a State public utility commission (PUC) or the Federal Energy Regulatory Commission (FERC)) to collect necessary funds from ratepayers. These commitments were made independently of NRC requirements. Thus, GAO is incorrect to assert that plants subject to deregulation will no longer have access to adequate decommissioning funds.

In addition, the NRC's experience to date with States that have implemented restructuring programs indicates that each of these States has recognized the importance of assuring recovery of decommissioning costs and has implemented, or indicated its intention to implement, an assured source of cost recovery for decommissioning from ratepayers through mechanisms such as non-bypassable wires charges. These charges must be paid even after a plant has been removed from the rate base or permanently ceases operation. Those charges that are temporary are structured to fully recover decommissioning costs over a defined transition period. For example, each of the 18 States with nuclear plants listed by GAO (see p. 14 of the report) that have initiated deregulation, has implemented a framework for recovery of decommissioning costs. Also, the NRC notes that the National Association of Regulatory Utility Commissioners (NARUC), as well as individual PUCs and FERC, have stressed the importance of decommissioning cost recovery in NRC deliberations on its policy statement on economic deregulation and its 1998 decommissioning funding assurance rule (see Enclosure 2). The NRC views this development as significant and believes that the GAO report should have emphasized State approaches to decommissioning funding assurance in those States that have already initiated deregulation.

In addition, the NRC's rule initiatives in this area explicitly account for this change, by recognizing the use of transition charges, non-bypassable wires charges, and other State-initiated approaches to decommissioning cost recovery. The NRC also notes that many other States with nuclear plants have not yet implemented deregulation initiatives and are unlikely to do so in the near future because of the typically lengthy process that is involved in implementing deregulation. Given current decommissioning funding status and the significantly smaller amounts remaining to be collected as evidenced by the March 31, 1999, status reports as discussed previously, it is unlikely that licensees in these States will have significant unfunded decommissioning obligations by the time any deregulation initiatives are implemented. In the unlikely event that these States do not address decommissioning appropriately, as described in the response to item 3, the NRC has other mechanisms to ensure decommissioning funding.

The NRC also believes that an analysis of the actual plants that, according to GAO, are collecting at an insufficient rate suggests that GAO's concerns are overstated. In Appendix I to the GAO report, GAO indicates that 17 licensees are undercollecting decommissioning funds. However, six of those 17 entities are government or cooperative utilities that set their own rates and have defined service territories that are less subject to deregulation and will thus be able to collect sufficient funds for decommissioning when needed. Similarly, four others are licensees in States that have implemented deregulation and whose decommissioning collections are guaranteed even in a deregulated environment. Five entities are in states that remain rate regulated; there is no indication that their regulated status will change in the near term. Finally, two entities have plants that have already shut down and are allowed to collect funding shortfalls from ratepayers. Thus, none of the licensees that GAO suggests in its baseline case are undercollecting decommissioning funds appears to be unable to collect funds from ratepayers for the foreseeable future.

3. GAO findings indicate that, to address the movement toward deregulating the electricity industry, in 1998 the NRC began requiring its licensees to provide additional financial assurances if rate regulators no longer guarantee collection of decommissioning costs from ratepayers. GAO further states that the NRC's alternative methods of decommissioning assurance rely on the continued financial health of the licensee or its parent company. Thus, the effectiveness of the NRC's 1998 regulatory changes will likely depend on how vigorously the NRC monitors the financial health of its licensees. In this regard, licensees must now provide financial reports every two years to NRC so it can monitor financial assurance for decommissioning. (GAO report, p.4)

NRC Response:

The NRC disagrees with this finding with respect to existing licensees and new licensees resulting from license transfers, and the experience with State deregulation initiatives. The NRC's requirements provide for a variety of mechanisms for decommissioning funding assurance and were developed beginning in 1995 to reflect State developments in this area. Parent company guarantees are one mechanism. GAO is correct that the NRC will have to monitor the finances of those licensees that choose to use this method of assurance. However, GAO failed to point out that no licensee is currently using this mechanism even though it is permitted. All licensees

either continue to be rate-regulated, have access to non-bypassable wires charges, or, with the purchases of the Three Mile Island Unit 1 (TMI-1) and Pilgrim plants, intend to prepay estimated decommissioning costs. Thus, the NRC believes significant monitoring of licensees' financial health, while possible in some cases in the future, is not necessary at this point because of the nature of the assurance mechanisms that licensees are using today.

As discussed above, the assurance method of choice of those States with nuclear plants that have initiated deregulation is to institute non-bypassable wires charges or otherwise provide for recovery of decommissioning costs. The GAO report does not fully acknowledge this significant development. Of course, it is possible that some States in the future could choose not to address decommissioning funding assurance in their deregulation initiatives. However, this is unlikely given the record so far and statements by representatives of NARUC and FERC before the NRC.

The GAO report also did not address the process that the NRC has in place to review applications for license transfers of nuclear power plants. Based on statements from the nuclear industry and its licensees, it is likely that there will be significant consolidation of the nuclear generating industry. The NRC has been told by some of its licensees that it can expect to see sales of from 6 to 12 nuclear plants within the next year. Each of these sales, as well as all future sales, will involve a license transfer, in which the NRC will evaluate the technical and financial qualifications of the proposed transferees to operate the plant safely, as well as to ensure, pursuant to its regulations and a Standard Review Plan (SRP) on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance, that adequate funds for decommissioning will be available as needed (see Enclosure 3). As indicated previously, prepayment of decommissioning costs is being used by the buyers of the TMI-1 and Pilgrim plants. Based on available information, the NRC expects that, for buyers that do not have rate regulatory oversight, this will be the likely assurance mechanism to be used. However, if this approach is not used, the NRC will insist on a mechanism with an equivalent level of assurance as provided in its regulations or it will not approve the transfer.

Finally, the NRC notes that the GAO report confuses financial monitoring of licensees that choose to use the parent guarantee method with the biennial decommissioning fund status report that describes the status of decommissioning funds. This report is separate from the explicit financial tests contained in the NRC's regulations that licensees must pass and submit to the NRC annually. The biennial reports contain information on external trust funds, which virtually all licensees are currently using and, so far, do not include guarantees. As an additional point, the NRC notes that the Commission also directed the staff to develop guidance that endorsed Financial Accounting Standards Board (FASB) initiatives in this area. Although action on this has been deferred pending further FASB action, it further illustrates the Commission's initiatives in this area.

4. GAO states that, in the decommissioning fund status reports, the NRC did not establish thresholds for clearly identifying acceptable levels of financial assurances or establish criteria for identifying and responding to unacceptable levels of assurances. (GAO report, p. 4; also "Recommendations," p. 6)

NRC Response:

The NRC disagrees. The contents of the decommissioning fund status reports are stated explicitly in the NRC's regulations. Further, the regulations covering both the amount of decommissioning funds and the allowable assurance mechanisms for decommissioning clearly establish the NRC's requirements. In addition, as described previously, the NRC developed a SRP that, among other issues, addressed how the NRC would review these reports. (This SRP was issued in draft in January 1997 and in final in March 1999 as NUREG-1577).

As provided in the NRC's regulations, the NRC will review the reports to determine, first, that licensees are collecting to the correct decommissioning cost estimate amount as specified in 10 CFR 50.75(c). If a licensee has either continued rate regulatory oversight or access to a non-bypassable wires charge imposed as a result of State restructuring initiatives, the NRC's regulations allow such licensees to collect decommissioning funds over the estimated 40-year operating life of the plant. (If the NRC approves license extension for a plant, the licensee of that plant would be allowed to accumulate funds over the extension period as well.) The NRC explicitly defers to PUCs and FERC (both in the preamble to the 1988 decommissioning rule and in the SRP) to establish the amortization schedules to collect any remaining unfunded decommissioning amounts for licensees that continue to be subject to their oversight, either directly or through non-bypassable charge mechanisms. The NRC recognized that, for these licensees, specifying amortization rates would require ratemaking authority that the NRC does not have. Given that ratemakers have the ability to require these licensees to increase amortizations when shortfalls occur, the NRC disagrees with the GAO that it should insist on increased amortizations for these licensees. For licensees no longer subject to ratemaking authority, the NRC requires that the full estimated cost of decommissioning must be assured by one of the mechanisms allowed by the NRC. Thus, for these licensees, specifying an amortization rate would be meaningless, since the decommissioning amount based on 10 CFR 50.75(c) is required to be fully assured.

It is important to point out that licensees remain responsible and liable for decommissioning costs until the NRC terminates the license. The NRC considered, but specifically declined to require initial full funds or guarantees because it was unreasonable to do so and, for the majority of licensees, would impose an unjustified burden.

The NRC has completed its review of the first set of decommissioning fund status reports that were submitted by March 31, 1999. Based on its review of these reports, the NRC has concluded that all licensees are on track to provide necessary funds for decommissioning commensurate with the NRC's regulations and are thus in compliance with the NRC's decommissioning funding assurance regulations. Although the NRC has noted a few ambiguities in the reports from a small minority of licensees, and is acting to have these licensees clarify these ambiguities, the NRC has found no instances of unacceptable levels of assurance. The NRC notes that, if it does find problems with licensee compliance or with the adequacy of rate regulatory oversight, it will take further action, as necessary. Finally, the Commission specifically directed the staff to provide it

with any additional recommendations for rulemaking based on the results of its review of the status reports.

As indicated previously, all of the plants that have shut down prematurely have been allowed to accumulate sufficient funds to complete decommissioning. Mechanisms in place or being developed by rate regulators will allow prematurely shutdown plants to recover uncollected decommissioning costs from ratepayers. The GAO report does not include support for its view that States will alter this approach to shutdown plants prematurely. Thus, the NRC disagrees that premature decommissioning will likely be a problem affecting financial assurance in the future.

In sum, the NRC has required the decommissioning fund status reports to determine licensee compliance with its regulations. Both the NRC's regulations and its SRP explicitly define what is required for different types of licensees in providing decommissioning funding assurance. Either licensees will be in compliance with these requirements, in which case the NRC needs to do nothing further, or licensees will not be in compliance, in which case the NRC will take appropriate action to ensure compliance. In either case, explicit criteria for compliance are already contained in the NRC's regulations.

5. The GAO report asserts that the NRC did not address bankruptcy in its amended regulations (GAO report, p. 32).

NRC Response:

The NRC agrees that bankruptcy is not specifically addressed in the amended regulations. However, in the preamble to the 1998 final decommissioning funding assurance rule and in other documents, the NRC discussed its experience with those few licensees that sought bankruptcy protection. When necessary, the NRC has provided, and intends to continue to provide, information and other input to the bankruptcy courts overseeing these cases. However, the NRC does not have the authority to change bankruptcy laws. The NRC has, however, sought legislation to give decommissioning expenses priority in any bankruptcy proceeding.

6. The GAO report recognizes that NRC-defined radiological decommissioning costs are a subset of the total decommissioning costs that a licensee may face. The GAO report further states that many licensees deposit funds for such non-radiological activities in their external decommissioning trusts. Finally, the GAO assumed under its "pessimistic" scenario that only 82 percent of funds in the decommissioning trusts would be available to pay for NRC-defined radiological decommissioning expenses, with the balance used to pay for non-radiological spent fuel costs and interim spent fuel management. (These percentages rise to 95 percent and 100 percent, respectively, for GAO's baseline and optimistic scenarios.) (GAO report, p.43)

NRC Response:

Costs of activities such as demolition of non-radioactive structures and site restoration are not included in the NRC's decommissioning funding assurance requirements because they are not directly part of the NRC's mission to protect public health and safety. The NRC believes that the GAO's assumptions for its "pessimistic" scenario do not take into account the NRC's very specific requirements in 10 CFR 50.82 with respect to when and for what purpose decommissioning trust funds may be disbursed. Thus, the NRC has the authority to prohibit spending of decommissioning funds, accumulated pursuant to our requirements for radiological decommissioning, on non-NRC-defined decommissioning costs. The NRC expects to exercise this authority if it determined that expenditures for such costs would cause the funds available for radiological decommissioning expenses to be insufficient.

ENCLOSURE 2

CHRONOLOGY OF RULEMAKING AND REGULATORY ACTIONS

1. June 27, 1988: Final Rule - "General Requirements for Decommissioning Nuclear Facilities" (53 FR 24018)
2. August 1990: Regulatory Guide - "Assuring the Availability of Funds for Decommissioning Nuclear Facilities"
3. April 8, 1996: Advance Notice of Proposed Rulemaking - "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors" (61 FR 15427)
4. June 21, 1996: NRC Administrative Letter 96-02 - "Licensee Responsibilities Related to Financial Qualifications"
5. September 23, 1996: "Draft Policy Statement on the Restructuring and Deregulation of the Electric Utility Industry" (61 FR 49711)
6. January 1997: Draft "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (NUREG-1577)
7. August 19, 1997: "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry" (62 FR 44071)
8. September 22, 1998: Final Rule - "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors" (63 FR 50465)
9. March 1999: Final "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (NUREG-1577, Rev. 1)