September 28, 2005

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - COMSECY-04-0068 - USE OF INSURANCE AS A METHOD TO PROVIDE FINANCIAL ASSURANCE FOR DECOMMISSIONING NUCLEAR POWER REACTORS

The Commission has disapproved the draft supplement to the Standard Review Plan (SRP) relating to the use of insurance for decommissioning funding for nuclear power reactors.

The NRC's regulations allow for the use of insurance for decommissioning funding purposes, and the Commission is considering how the NRC's guidance in this area should be supplemented. In particular, it is the Commission's intent to develop a regulatory guide to provide broad instruction for external stakeholders and the staff related to complex insurance issues that have arisen and might arise again. Taking into account possible resource implications, the Commission is considering whether this guidance document should be prepared using a phased approach.

The first step towards a decision in this area is to schedule a public Commission meeting with panels of experts and representatives of affected interests (assembled by SECY in consultation with the staff) on the issues associated with development of expanded criteria. This meeting will help the Commission obtain information necessary to reach an informed decision on a path forward and to ascertain the level of interest on the part of insurance companies and the industry in using insurance for decommissioning funding. The Commission will consider

discontinuing efforts to develop a guidance document if, among other things, the Commission receives significant input from stakeholders indicating a lack of interest in use of insurance for decommissioning funding.

In preparation for the development of a regulatory guide, the staff should prepare a resource estimate of the costs associated with preparation of a document addressing the following:

(1) the NRC's global view of how insurance can provide financial assurance for decommissioning;
(2) how 10 C.F.R. § 50.75(e)(1)(iii) should be implemented;
(3) how the staff will evaluate proposals to use insurance;
(4) data required by the staff for review of such proposals; and
(5) the preferred standard format, in the form of a sample policy, for any insurance proposals.

The Commission has given careful attention to matters raised by the staff's draft SRP and has reached some initial observations regarding aspects of insurance proposals that must be addressed in the regulatory guide. The Commission is sharing these observations as a baseline position, knowing full well that the public meeting may yield information and additional perspectives that will merit reconsideration of some issues.

First, the Commission is inclined to disapprove the participation of captive insurers. While risk retention groups (RRGs) may be permitted, the Commission thinks they should receive close scrutiny that may require a financial strength rating, and should be approved under limited circumstances. Any guidance in this area should call for a staff review of scenarios that focus on common economic failures of RRG members prior to approval of any proposal involving a RRG in order to ensure an adequate level of risk independence among the members of the group. It may be that risk retention groups, as a class, would not provide the necessary level of financial soundness needed for decommissioning funding assurance purposes.

Second, the Commission believes it is appropriate to allow a limited claims management process that would permit an insurer to have input into how decommissioning activities are completed, e.g., what vendor/contractor will perform work or what an acceptable cost range for activities would be. Claims management provisions should in no way allow an insurer to disapprove any activity or cleanup of any level of residual contamination specifically approved by the NRC as part of a license termination plan. The public meeting described above should explore the position forwarded by some commenters that insurers cannot offer insurance without some claims management and the ability to determine whether a claim is legitimate (covered and incurred cost).

Third, the Commission is considering the use of sublimits to govern the amount of funds available for NRC-directed radiological cleanup activities in policies with multiple purposes. The Commission might also consider a limited priority clause to permit unused or unneeded funds to pass from non-radiological cost coverage to radiological or vice versa.

Fourth, the Commission thinks litigation expenses should be covered under insurance policies. The Commission will consider what percentage of the policy value should be paid out for litigation costs.

Fifth, the Commission believes an insurer should be required to possess an appropriate license to transact the business of insurance that includes the proposed type of license. This can be in lieu of the proposed requirement that the insurer either be licensed in the States where the plants are located or obtain approval or a statement of non-objection from such state authorities.

Sixth, the draft guidance document developed by the staff should be published for public comment, and submitted to the Commission for information prior to publication. The final regulatory guide should be submitted to the Commission for approval prior to publication.

Finally, the Commission considers that any criteria developed in guidance regarding the use of insurance to provide financial assurance for decommissioning should assure that the risks associated with the particular insurance proposals are not substantially greater than prepayment or external trust funds.

cc: Chairman Diaz
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
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