Standby Support Final Rule Overview

U.S. Department of Energy

March 6, 2008

Standby Support (EPAct Section 638) Program Goal

- **Indemnification for six new advanced nuclear reactors for delays related to:**
  - Failure of NRC to comply with scheduled review and approvals
  - Certain litigation that delays full-power operation
- **Covered Costs:**
  - Initial two reactors: 100% of covered cost of delay up to $500M each
  - Subsequent four reactors: 50% of covered cost of delay up to $250M each *after* a 180-day period of delay

Overview of Final Rule

- **Two sections**
  - Preamble (provides clarification to regulation)
  - Regulatory Text
- **Five subparts**
  - Subpart A – General Provisions
  - Subpart B – Standby Support Contract Process
  - Subpart C – Claims Administration Process
  - Subpart D – Dispute Resolution Process
  - Subpart E – Audit Investigations and Other Provisions

Overview of Subpart A – General Provisions

Purpose

- Provide risk insurance to facilitate construction and full-power operation of new advanced nuclear facilities

Definitions

- Include certain definitions from EPAct verbatim
- Clarify other terms (examples: Commencement of construction, Sponsor, Initial two reactors)

Overview of Subpart B – Standby Support Contract Process

- **Two Step Process**
  - Conditional Agreement (Step 1)
  - Standby Support Contract (Step 2)
- **Coverage Options**
  - **Grant Account**
    - Pays incremental cost of contracted electricity versus sponsor's cost to produce
    - Combination of appropriations, Sponsor funds, or a non-Federal source
  - **Program Account**
    - Covers principal and interest on loan
    - Combination of appropriations, Sponsor funds or non-Federal source
  - Program Account is preferred option because of scoring protocols

Overview of Subpart B – Standby Support Contract Process *(cont.)*

Conditional Agreement Requirements

- Docketed combined license application
- Summary schedule on projected dates of construction, testing, and full-power operation
- Detailed plan of intended financing for project
- Estimated amount and timing of payments for debt service
- Estimate of percentage of amount allocated to program accounts (Program/Grant)

Overview of Subpart B – Standby Support Contract Process *(cont.)*

Standby Support Contract Process

- After construction commencement – pouring of safety related concrete
- Does not include sample contract, however,
- Does include provisions addressing basic contract terms:
  - purpose, covered facility, sponsor contribution, maximum compensation, terms, cancellation, assignment, claims administration, and dispute resolution

Overview of Subpart B – Standby Support Contract Process *(cont.)*

Covered Facility

- Advanced nuclear facilities (certified after Dec. 31, 1993)
- First two facilities to meet all 9 conditions precedent may obtain initial two reactor slots – r*egardless of technology*
  - » Obtain a conditional agreement,
  - » Issuance of a COL,
  - » Commence construction,
  - » All Federal, State, or local permits,
  - » All required insurance,
  - » Payment of required fees into the program and grant accounts,
  - » Proposed ITAAC schedule,
  - » Detailed systems-level construction schedule, and
  - » Detailed plan of financing for the project.

Overview of Subpart B – Standby Support Contract Process *(cont.)*

Covered Events

- **NRC ITAAC Schedule**
  - Commission verifies that ITAAC is met but does not set schedule to complete its review.
  - Commission concern: 80% of ITAAC is completed during last 20% of construction.
- **Alternatives for Delay Determination**
  - If Commission issues any rules, guidance, audit procedures, or formal opinions on its review of sponsor's ITAAC, Department would use that information to evaluate ITAAC delay. (Commission has indicated that it would issue such guidance)
  - If none of above issued, Department would independently evaluate sponsor's ITAAC schedule

Overview of Subpart B – Standby Support Contract Process *(cont.)*

- **Covered Events (cont.)**
  - **Preoperational Hearing**
    - Not mandatory: requestor must demonstrate NRC's acceptance criteria were not met.
  - **Litigation**
    - Includes only adjudication in State, Federal or tribal courts, including appeals of Commission decisions related to COL

Overview of Subpart B – Standby Support Contract Process *(cont.)*

Exclusions

- Failure of sponsor to take action required by law or regulation
- Events within control of sponsor – includes non-exhaustive set of examples
- Normal business risks – ex: strike, weather delay, etc.

Full Power Operation

- Begins once facility is first synchronized to the electrical grid

Overview of Subpart C – Claims Administration Process

Two-Step Process

- **Notification (Step 1)**
  - Description and explanation of covered event (within 30 days of occurrence of covered event)
  - Projected duration, any revisions to schedule for construction, new-ITAAC schedule
  - Covered Event Determination made by Claims Administrator
- **Claim Submission (Step 2)**
  - Sponsor submits a "Certification of Covered Costs" with supporting documentation that establishes basis for claim.

Overview of Subpart D – Dispute Resolution Process

- **Two Main Types of Disputes**
  - Covered Events
  - Covered Costs
- **Dispute resolution process for resolving claims**
  - Written rebuttal filed for disagreements with Administrator
    - Mediation required if no agreement
  - Summary Trial with Binding Decision, if still no agreement
    - Before Board of Contract Appeals
    - Tried informally before single administrative judge or panel of administrative judges.
    - Summary or Bench decision will be issued that cannot be appealed.

Overview of Subpart E – Audit Investigations and Other Provisions

Public Disclosure of Information

- Industry concern: information in Part 52 application process and under Program contains proprietary information that should not be disclosed to public
- Advocacy group comment: all information under Program should be made public
- Solution
  - Information is made public unless sponsor demonstrates that information, if made public, would divulge trade secrets or other proprietary information
  - Consistent with Freedom of Information Act

Standby Support Schedule

- Department issued final rulemaking in August 2006
- Released Standard Conditional Agreement September 2007
  - Two Step Process: Conditional Agreement (Step 1), then Standby Support Contract (Step 2)
- Released Request Instructions in December 2007
  - ***All Information can be obtained at: www.nuclear.gov***

Schedule

- First Standby Support Conditional Agreements with industry expected in 2008