

CHARLES V. SANS CRAINTE, P.E.
Vice President, Generation

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DAIRYLAND POWER
COOPERATIVE

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(73FR3811)

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

April 7, 2008

Secretary U.S. Nuclear Regulatory Commission
Attention: Rulemakings and Adjudications Staff
Washington, D.C. 20555-001


Re: RIN 3150-AH45
Comments of Dairyland Power Cooperative on Proposed NRC Rule on
Decommissioning Planning

Dear Sir or Madam:

Dairyland Power Cooperative submits these comments on the proposed rule on decommissioning planning published by the Nuclear Regulatory Commission in the Federal Register on January 22, 2008, 73 Fed. Reg. 3812 *et seq.* (January 22, 2008).

Dairyland Power Cooperative ("Dairyland") is a Wisconsin generation and transmission cooperative association that provides the wholesale electrical requirements and other services for twenty-five electric distribution cooperatives and nineteen municipal utilities. The Dairyland members have service areas in Wisconsin, Illinois, Minnesota and Iowa. These cooperatives and municipal utilities deliver the electricity from Dairyland to their consumers to meet the energy needs of more than 500,000 people. Dairyland owns and operates three coal-fired generation stations located on the Mississippi River, as well as a hydro electric station, natural gas-fired combustion turbine generation units, and a variety of renewable energy generation facilities.

Dairyland owns and maintains the La Crosse Boiling Water Reactor ("LACBWR") a demonstration reactor developed in conjunction with the Atomic Energy Commission in the 1960s. LACBWR was permanently shut down in 1987, and Dairyland maintains and stores the spent nuclear fuel and the remaining reactor facilities under possession-only license number DPR-45. LACBWR has been in SAFSTOR since it was shut down in 1987, and the LACBWR spent fuel has been maintained in the spent fuel pool within the reactor building. Dairyland is currently planning to move the spent fuel to a dry cask storage facility to be located at the LACBWR site.

A Touchstone Energy® Cooperative 

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Dairyland is concerned by the proposed changes to 10 C.F.R. 50.82 that could be read to imply a new requirement for licensees of shut down power reactors to provide advanced funding of SAFSTOR costs within a nuclear decommissioning trust or similar financial security mechanism, rather than to allow licensees to demonstrate that they can responsibly cover those expenses through licensee operating revenues. Language in the proposed new section 50.82 (a)(8)(vii) would require such a licensee to annually report on the status of funding for managing irradiated fuel, including a report on the amount of funds accumulated to cover the cost of managing irradiated fuel, the projected cost of managing irradiated fuel until title to the fuel and possession of the fuel is transferred to the Secretary of Energy, and a plan to obtain additional funds to cover any shortfall in that funding.

In the discussion for the amendment of 10 C.F.R. 50.82 in Section II (H) of the rulemaking proposal, the Commission notes that it is concerned that several power reactor licensees have decommissioned their fully shut down reactors, but have become only single-purpose utilities owning only the shut-down reactor generation facilities. Those licensees no longer have operating sales revenues, except to recover the costs of the shutdown facilities. The Commission also noted that regulatory oversight of the electric industry has changed over the last fifteen years, and now would permit a reactor licensee to operate as a merchant plant, without an assured customer base or a mechanism for rate recovery of all of the costs of service. For a licensee without a customer base or assured operating revenues, there is a risk that if the licensee ceases operations, it would not have adequate financial resources to cover the costs of storage of irradiated fuel. However, nothing in that discussion expressly states that the Commission intends to require all licensees to pre-fund for the costs of storage of irradiated fuel.

Dairyland is concerned that the proposed new language in 10 C.F.R. 50.82 will require even an operating utility like Dairyland with a shut down reactor to create a new, dedicated funding mechanism to pre-fund the costs of storage of irradiated fuel until the Department of Energy begins performance under the Nuclear Waste Policy Act to take possession and title to the spent fuel in storage. Dairyland already maintains a nuclear decommissioning trust to pre-fund the costs for ongoing and final decommissioning of LACBWR, but Dairyland has always funded the ongoing costs for storage of spent fuel as part of its operating budget. Those costs have been wrapped into the Dairyland operating costs in the annual budget process, and covered as part of its wholesale rates to its members. Those SAFSTOR costs are now on the order of \$6 million per year, which is a relatively small percentage of Dairyland's total operating expenses, which for comparison were approximately \$252 million in 2006.

With the current uncertainties over when the DOE will obtain a license for the federal repository, let alone open the repository or some other interim storage facility for receipt of fuel, it could be 10 or 15 years before the DOE takes possession of Dairyland's fuel. It would be financially unfair to Dairyland and its members for Dairyland to incur the cost to pre-fund more tens of millions of dollars in a form of SAFSTOR trust to show financial security for SAFSTOR costs, when Dairyland has been handling those expenses responsibly for more than twenty years. Dairyland requests that the final rule decision clarify that an operating utility like Dairyland be allowed to demonstrate its financial security for SAFSTOR costs by providing an update of its financial performance and a demonstration that the SAFSTOR costs are adequately funded as an annual operating expense, without a requirement for pre-funding for those costs under a separate

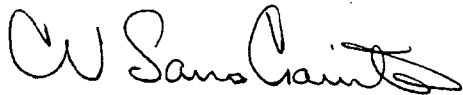
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form of financial assurance. If a utility can demonstrate that it has an assured customer base and long-term contracts to serve that customer base and to recover its costs of operation, it should not be required to pre-fund its SAFSTOR costs if those costs will be recovered from operating revenues.

Thank you for the opportunity to submit these comments. Please contact me if you have any questions.

Sincerely,

DAIRYLAND POWER COOPERATIVE

A handwritten signature in cursive script, appearing to read "C. V. Sans Crainte".

Charles V. Sans Crainte, P.E.
Vice President, Generation

Secy

From: Cindi S Bachman [css@dairynet.com]
Sent: Monday, April 07, 2008 4:29 PM
To: Secy
Subject: RIN 3150-AH45 Comments of Dairyland Power Cooperative on Proposed NRC Rule on Decommissioning Planning
Attachments: RIN 3150-AH45.pdf

Please find attached comments from Dairyland Power Cooperative.

(See attached file: RIN 3150-AH45.pdf)

Thanks!
Cindi Bachman
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d="pdf?scan'208";a="13776790"

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From: Cindi S Bachman <css@dairynet.com>

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