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Trojan ISFSI
Docket 72-17
License SNM-2509

Secretary,
U. S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001

Subject: Comments on NRC Proposed Rule on Decommissioning Planning (RIN 3150-AH45)

This document provides Portland General Electric Company's (PGE's) comments on the Nuclear Regulatory Commission's (NRC's) proposed amendment to its regulations relating to decommissioning planning and financial assurance (73 FR 3812, dated January 22, 2008). PGE supports the comments that the Nuclear Energy Institute (NEI) is submitting to the NRC on the subject proposed rulemaking and associated guidance documents.

PGE is one of three Licensees for the Trojan ISFSI. On April 25, 2005, the Trojan ISFSI received NRC approval for a partial exemption from 10 CFR 72.30(c)(5), which allowed two of the three Trojan ISFSI Site-Specific Licensees to continue to use 10 CFR 50.75(e)(1)(ii)(A) as the exclusive mechanism relied upon for providing financial assurance for ISFSI decommissioning, after the Trojan Part 50 license was terminated in May 2005. To provide financial assurance and adequate funds for ISFSI radiological decommissioning, these two electric utility Licensees each use an External Sinking Fund in the form of a Trust to deposit funds recovered from customer rates. The third Trojan ISFSI Licensee is a government entity and currently provides its financial assurance for ISFSI decommissioning with a Statement of Intent in accordance with 10 CFR 72.30(c)(4).

The following PGE comments are focused on the NRC's proposed rule changes related to 10 CFR 72.30 that apply to ISFSI Site-Specific Licenses. It is noted, however, that some of these comments may also be relevant to 10 CFR 30, 40, and 70 Material Licenses and to ISFSI General Licensees.

Comment 1

Section 72.30(b) of the proposed rule change currently contains a new list of information that must be included in an ISFSI and MRS licensee's decommissioning funding plan. Proposed items (b)(1) and (b)(4) are quoted below and appear to be partially redundant. It is recommended that item (b)(1) be deleted and the items be re-numbered since item (b)(4) appears to encompass more than the information required by (b)(1).

"(1) Information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI or MRS.

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(4) A description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. ”

Comment 2

Section 72.30(c) of the proposed rule change establishes a new requirement for Part 72 licensees to submit to NRC a decommissioning funding plan at intervals not to exceed 3 years. The proposed rule change requires this decommissioning funding plan to contain all of the information specified in section 72.30(b), which includes a detailed decommissioning cost estimate with additional information. The Draft Guidance on Financial Assurance for Decommissioning Planning Proposed Rule, Appendix A, section A.3 indicates that the decommissioning funding plan and its detailed decommissioning cost estimate should be submitted to the NRC using the checklist and tables format provided in the guidance. To meet the requirements of this rule change, a Part 72 licensee will need a considerable amount of time and resources to prepare this decommissioning funding plan and its detailed decommissioning cost estimate for submittal to the NRC. It is recommended that the NRC provide at least one (1) year following the effective date of the rule change for Part 72 licensees to prepare and submit their first updated decommissioning funding plan. This submittal time should be stated in section 72.30(c) of the final rule.

Comment 3

Section 72.30(c) of the proposed rule change currently states, in part:

“(c) At the time of license renewal and at intervals not to exceed 3 years the decommissioning funding plan must be re-submitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted, this cannot be done until the updated decommissioning funding plan is approved....”

In reference to the wording in the second sentence, it is not clear why a licensee cannot increase the amount of financial assurance until the updated decommissioning funding plan is approved by the NRC. Section 72.54(e) states that, “the amount of financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning...” In addition, the proposed wording related to financial assurance in section 72.30(g) requires a licensee to increase the decommissioning fund balance within 5 days; anytime a licensee determines that the fund balance is below the amount to cover the cost of decommissioning. It is recommended that the proposed wording in the last sentence of section 72.30(c) be changed as follows:

“If the amount of financial assurance will be decreased, this cannot be done until the updated decommissioning funding plan is approved.”

Comment 4

The text of section 10 CFR 72.30(e)(5), as stated below, is not being changed as a part of this proposed rule change:

“(5) In the case of licensees who are issued a power reactor license under Part 50 of this chapter, the methods of 10 CFR 50.75(b), (e), and (h), as applicable.”

On April 25, 2005, the Trojan ISFSI received NRC approval for a partial exemption from 10 CFR 72.30(c)(5), which allowed two of the three Trojan ISFSI Site-Specific Licensees to continue to use 10 CFR 50.75(e)(1)(ii)(A) as the exclusive mechanism relied upon for providing financial assurance for ISFSI decommissioning, after the Trojan Part 50 license was terminated in May 2005. This proposed rule change renumbers section 72.30(c)(5) to say 72.30(e)(5). It is recommended that this proposed rule change be reworded to allow Trojan and other ISFSI Site-Specific Licensees (that no longer have a power reactor license under Part 50) to continue to use the methods of 10 CFR 50.75(b), (e), and (h) without the need for an exemption. The recommended wording changes to section 72.30(e)(5) are provided below:

"(5) In the case of licensees who are issued a power reactor license under Part 50 of this chapter or ISFSI licensees who are an electric utility with a Site-Specific License issued under Part 72 of this chapter, the methods of 10 CFR 50.75(b), (e), and (h), as applicable. In the event that funds remaining to be placed into the licensee's ISFSI decommissioning external sinking fund are no longer approved for recovery in rates by a competent rate making authority, the licensee must make changes to provide financial assurance using one or more of the methods in 72.30(e)."

Comment 5

Currently section 72.30(f)(4), as stated below, is not being changed as a part of this proposed rule change.

"(4) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used."

Part 72 does not have provisions for an ISFSI licensee to certify to a prescribed amount of financial assurance like Part 30, 40 and 70 material licensees do, for example see 70.25(d). It is recommended that the section 72.30(f)(4) wording, related to certifying to a prescribed amount of financial assurance, be deleted and item (4) be reworded as shown below:

"(4) Records of the cost estimate performed for the decommissioning funding plan and records of the funding method used for assuring funds are available for decommissioning."

NOTE: Three specific comments (6.1, 6.2 and 6.3) related to the proposed rule new section 72.30(g) are addressed individually below followed by a summary of our recommendations:

Comment 6.1

The new sections 72.30(g)(1) and (2) of the proposed rule change currently state:

"(g) In providing financial assurance under this section, each licensee must use the financial assurance funds only for decommissioning activities and each licensee must monitor the balance of funds held to account for market variations. The licensee must replenish the funds, and report such actions to the NRC, as follows:

(1) If, at the end of a calendar quarter, the fund balance is below the amount necessary to cover the cost of decommissioning, but is not below 75 percent of the cost, the licensee must

increase the balance to cover the cost, and must do so within 5 days after the end of the calendar quarter.

(2) If, at any time, the fund balance falls below 75 percent of the amount necessary to cover the cost of decommissioning, the licensee must increase the balance to cover the cost, and must do so within 5 days of the occurrence. ”

It appears that the above new requirements are focused on the portion of a licensee's decommissioning funds that have been prepaid or collected and are subject to market variations. The licensee's funds associated with the Prepayment and External Sinking Fund methods will be invested and would be subject to market variations, however, the Surety, Insurance, or Other Guarantee methods may not involve any licensee invested funds. The Prepayment method is expected to be fully funded at all times, therefore, the proposed wording in section 72.30(g) above would work. In the case of the External Sinking Fund method, the fund is not required to be fully funded until the final ISFSI facility decommissioning is expected to begin. Per section 72.30(b) of the proposed rule, a licensee must have an NRC approved decommissioning funding plan for their External Sinking Fund and is required to make deposits into the fund at least annually. As currently worded, the proposed sections 72.30(g)(1) and (g)(2) do not recognize that an ISFSI licensee's fund balance for their External Sinking Fund is not required to contain "the amount necessary to cover the cost of decommissioning" until the final facility decommissioning begins. As stated in the proposed changes to 10 CFR 72.13, it is noted that these new 10 CFR 72.30(g) requirements are not applicable to Part 72 ISFSI General Licensees because they will be using section 72.30(e)(5) that refers to 10 CFR 50.75 financial assurance requirements. As discussed in Comment 4 above, the Trojan ISFSI Site-Specific Licensees may be unique because they have an NRC approved exemption that allows the use of a 10 CFR 50.75(e)(1)(ii)(A) External Sinking Fund coupled with funding the estimated cost of decommissioning through rate recovery, as their exclusive mechanism for providing financial assurance. As section 72.30(g) is currently worded, on the effective date of the Rule change, it would require two of the three Trojan ISFSI licensees to fully fund their External Sinking Fund to cover the cost of decommissioning within 5 days and make the 30 day report to the NRC. It is recommended that wording similar to the following be added to the proposed sections 72.30(g)(1) and (g)(2):

"If ..., the fund balance is below the amount necessary to cover the cost of decommissioning, or in the case of an external sinking fund the amount required at that point in time by the approved funding plan, the licensee must increase the balance to provide the required amount of funds "

Comment 6.2

The new sections 72.30(g)(1) and (2) of the proposed rule contain excessive requirements for monitoring and correcting fund balances. Part 72 ISFSI Site-Specific Licenses are normally a 20 year license that will need to be renewed or extended until the U.S. Department of Energy takes title to the spent nuclear fuel. Based on continuing delays in the scheduled opening of the federal repository, a specific realistic ISFSI facility decommissioning date cannot be determined, however, it may not occur until approximately 2030 or 2040. Based on such a long period of ISFSI licensed operations, the requirements in section 72.30(g)(1) and (2) to monitor decommissioning fund balances "quarterly" and "at any time" and to increase fund balances "within 5 days" are considered very excessive. It is recommended that the following changes be

considered to simplify the rule and reduce an unnecessary burden on ISFSI licensees with a Site-Specific License, while still providing adequate assurance and information to the NRC.

- a. It is not clear why both requirements are needed in sections 72.30(g)(1) and (2) since the required action (increase fund balance within five days) and reporting requirement (30 day report to NRC) are essentially the same. One monitoring requirement that requires timely action and adequate reporting should be sufficient. Based on the long duration of ISFSI operations, an annual (versus quarterly) monitoring requirement and a 30 day (versus 5 day) requirement to increase the fund balance is considered more reasonable and adequate. The following wording for this recommendation is provided below:

“(g) In providing financial assurance under this section, each licensee must use the financial assurance funds only for decommissioning activities and each licensee must monitor the balance of funds held to account for market variations. The licensee must replenish the funds, and report such actions to the NRC, as follows:

(1) If, at the end of a calendar year, the fund balance is below the amount necessary to cover the cost of decommissioning, the licensee must increase the balance to cover the cost, and must do so within 30 days after the end of the calendar year.”

- b. Since the section 72.30(g)(2) text related to “75 percent of the required amount” was deleted in the above recommendation, if the NRC desires to know when a licensee’s fund balance falls below 75 percent of the required amount, this could be added to the (g)(3) renumbered as (g)(2) reporting requirement as follows:

“(2) Within 30 days of taking the actions required by paragraph (g)(1) of this section, the licensee must report such actions to the NRC, state the new balance of the fund, and state whether or not the fund balance had fallen below 75 percent of the required amount.”

Comment 6.3

The new section 72.30(g)(3) of the proposed rule change currently states:

“(3) Within 30 days of taking the actions required by paragraphs (g)(1) or (g)(2) of this section, the licensee must report such actions to the NRC, and state the new balance of the fund.”

The 72.30(g)(3) wording should be clarified to specify the NRC position/office the report is made to and whether this is a verbal report or a written report.

Comments 6.1, 6.2, and 6.3 Summary

If all 3 of the above Comments (6.1, 6.2, and 6.3) are incorporated, the recommended wording of section 72.30(g) would read as follows:

“(g) In providing financial assurance under this section, each licensee must use the financial assurance funds only for decommissioning activities and each licensee must monitor the balance of funds held to account for market variations. The licensee must replenish the funds, and report such actions to the NRC, as follows:

(1) If, at the end of a calendar year, the fund balance is below the amount necessary to cover the cost of decommissioning, or in the case of an external sinking fund the amount required at that point in time by the approved funding plan, the licensee must increase the balance to provide the required amount of funds, and must do so within 30 days after the end of the calendar year.

(2) Within 30 days of taking the actions required by paragraph (g)(1) of this section, the licensee must provide a written report of such actions to the Director, Office of Nuclear Material Safety and Safeguards, state the new balance of the fund, and state whether or not the fund balance had fallen below 75 percent of the required amount. ”

Comment 7

Due to the re-numbering in this proposed rule change, editorial changes to the following sections of 10 CFR 72 should be made:

- Section 72.30(f)(3)(ii): the reference to 72.30(d)(1) should be changed to say 72.30(f)(1)
- Sections 72.80(e) and (f): the references to 72.30(d) should be changed to say 72.30(f)

Secy

From: Jerry Reid [Jerry.Reid@pgn.com]
Sent: Thursday, May 01, 2008 4:30 PM
To: Secy
Subject: RIN 3150-AH45: Comments from PGE, Trojan ISFSI on Proposed Decommissioning Planning Rule
Attachments: PGE - Trojan ISFSI Comments on Decommissioning Planning Proposed Rule RIN 3150-AH45.doc

Madam Secretary,

The attachment to this e-mail provides Portland General Electric Company's (PGE) comments on the NRC's proposed amendment to its regulations (RIN 3150-AH45) relating to decommissioning planning and financial assurance (73 FR 3812, dated January 22, 2008).

Thank you in advance for your consideration of PGE's comments on the NRC's proposed Decommissioning Planning Rule.

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From: Jerry Reid <Jerry.Reid@pgn.com>
To: "SECY@nrc.gov" <SECY@nrc.gov>
Date: Thu, 1 May 2008 13:29:59 -0700
Subject: RIN 3150-AH45: Comments from PGE, Trojan ISFSI on Proposed
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