



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

August 26, 2008

Jessica L. Mitchell
Baker & McKenzie
One Prudential Plaza, Suite 3500
130 East Randolph Drive
Chicago, IL 60601

Dear Ms. Mitchell:

The staff reviewed the MAHLE Engine Components Escrow Agreement for conformance with the regulations and to the regulatory guidance of NUREG 1757, Vol. 3, "NMSS Consolidated Decommissioning Guidance, Financial Assurance, Recordkeeping, and Timeliness." Based upon this review, the following deficiencies were identified:

Paragraph 4: Disbursement of Property in Escrow Account: Please remove Subpart (b) as payment shall not be made in the entire amount of the funds remaining in the escrow unless approved by NRC pursuant to the clause found at the end of Subpart (a) of Paragraph 4 which states, "No withdrawal from the account for a particular license can exceed 10 percent of the remaining funds available for that license, unless NRC written approval is attached." Subpart (c) would no longer be subpart (c), but would be a stand alone paragraph at the bottom of Paragraph 4 and would begin: In addition, The Escrow Agent receiving written... and would end with ... as described in Paragraph 2 above.

Paragraph 5: Irrevocability: Please remove the last part of the sentence beginning with, "... or the complete disbursement of the amount in the escrow account pursuant to Paragraph 4" as this will no longer be a valid statement based on how Paragraph 4 is revised above.

Paragraph 6: Powers of the Escrow Agent: Please correct the typo in Subpart (a) from "or" to "of" in the last part of the first paragraph which should read as follows, "... , that persons of prudence, acting in like capacity and familiar with such matters, ..." Please revise clause (ii) to reflect the following, "The Escrow Agent is authorized to invest the escrow account in time or demand deposits to the extent insured by an agency of the federal government, and in repurchase agreements, or other obligations to the extent constituting securities issued by the United States government or to the extent insured or back by the United States government; and. . ."

Paragraph 7: Annual Valuation: Please add the following phrase to the end of the last sentence, "barring the licensee from asserting any claim or liability against the Escrow Agent with respect to the matters disclosed in the statement."

Paragraph 11: Amendment to this Agreement: Please revise the section to read as follows, "This escrow agreement (Agreement) may be amended by an instrument in writing executed by the Licensee, the Escrow Agent, and NRC, or by the Escrow Agent and NRC if the licensee ceases to exist. All amendments shall meet the relevant regulatory requirements of NRC."

Paragraph 16: Liability of Agent: Please remove this section as it is a new section that limits the Escrow Agent's liability to that resulting from acts caused by its gross negligence or malfeasance. This section excessively limits the Escrow Agent's liability for various escrow management activities, threatens the effectiveness of the agreement for financial assurance purposes and may be in conflict with the language that also appears in Paragraph 6 providing that the Escrow Agent manage the escrow fund "solely in the interest of NRC and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims."

Specimen Certificate of Resolution to Commence Decommissioning: Please revise the statement above the signature block to read, "IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of this Corporation this ___ day of _____, 20__.

Certified Resolution Authorizing the Making and Performance of the Escrow Agreement: Please revise the statement above the signature block to read, "IN WITNESS WHEREOF,

When submitting the above changes to the Escrow Agreement, please reference as additional information to Control Number 300386.

If you have any questions, please feel free to contact me at 630-829-9854.

Sincerely,



Kevin G. Null
Materials Licensing Branch

Docket No.: 030-04910
License No.: 21-12192-01

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Kevin G. Null
Materials Licensing Branch

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