

Rafael Rodriguez

From: Rafael Rodriguez
Sent: Wednesday, October 15, 2008 8:37 AM
To: 'LINK Robert (AREVA NP INC)'; MAAS Loren J (AREVA NP INC)
Subject: REVIEW OF STANDBY TRUST AGREEMENT
Attachments: AREVA Standby Trust Agreement-with-comments.pdf

Good morning:

I have attached a marked-up version of AREVA's Standby Trust Agreement. The comments from the NRC reviewer are based on the template provided in Appendix A of NUREG-1757, Vol. 3, which can be accessed at:

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1757/v3/sr1757v3.pdf>

As per our discussion yesterday, we are willing to discuss these comments in a conference call.

Pursuant to 10 CFR 2.390, a copy of this e-mail and its attachment will be available for public inspection.

Thanks.

AMENDED AND RESTATED STANDBY TRUST AGREEMENT

AGREEMENT made April 28, 2008, as amended and restated as of the 15th day of August, 2008, by and between AREVA NP Inc., a Delaware corporation, the "Grantor," and State Street Bank and Trust Company, 125 Sunnynoll Ct., Suite 200, Winston-Salem, NC 27106, the "Trustee."

All caps
Whereas, the U. S Nuclear Regulatory Commission (NRC), an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, Part 70. These regulations, applicable to the Grantor, require that a holder of, or an applicant for, (a part 70 license) provide assurance that funds will be available when needed for required decommissioning activities.

Whereas, the Grantor has elected to use a letter of credit to provide all of such financial assurance for the facilities identified herein; and a materials license issued pursuant to 10 CFR Part 70

Whereas, when payment is made under the letter of credit, this standby trust shall be used for the receipt of such payment; and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

All caps
Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the NRC Licensee who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Costs of Decommissioning. This Agreement pertains to the costs of decommissioning the materials and activities identified in License Number SNM 1227 issued pursuant to 10 CFR part 70 as shown in Schedule A.

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, (the Fund), for the benefit of the NRC. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein

Section 4. Payments Constituting the Fund. Payments made to the Trustee for the Fund shall consist of cash, securities, or other liquid assets acceptable to the Trustee. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee are referred to as the "Fund", together with all

earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount of, or adequacy of the Fund, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NRC.

Section 5. Payments for Required Activities Specified in the Plan. The Trustee shall make payments from the Fund to the Grantor upon representation to the Trustee of the following:

- a. A certificate duly executed by the Secretary of the Grantor attesting to the occurrence of the events, and in the form set forth in the attached Certificate of Events, and
- b. A certificate attesting to the following conditions:
 - (1) that decommissioning is proceeding pursuant to an NRC-approved plan;
 - (2) that the funds withdrawn will be expended for the activities undertaken pursuant to that plan; and
 - (3) that the NRC has been given 30 days prior notice of AREVA NP Inc.'s intent to withdraw funds from the trust fund.

No withdrawal from the Fund for a particular license can exceed 10 percent of the remaining funds available for that license unless NRC written approval is attached.

In addition, the Trustee shall make payments from the Fund as the NRC shall direct, in writing, to provide for the payment of the costs of required activities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the NRC from the Fund for expenditures for required activities in such amounts as the NRC shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the NRC specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the (trust fund) solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of

Fund

prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government.

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government and in obligations of the Federal government such as GNMA, FNMA and FHLM bonds and certificates or State and Municipal bonds rated BBB or higher by Standard & Poor's or Baa or higher by Moody's Investment Services; and

(iii) For a reasonable time, not to exceed 60 days, the Trustee is authorized to hold uninvested cash awaiting investment or distribution without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80(a)-1, et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale, ~~No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;~~ *as necessary to allow duly authorized withdrawals at the joint request of the Grantor and NRC or to reinvest in securities at the direction of the Grantor;*

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, to reinvest interest payments and funds from matured and redeemed instruments, to file proper forms concerning securities held in the Fund in a timely fashion with appropriate government agencies, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee ~~of~~ ^{ac} such ~~depository~~ with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

depository

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements ~~of~~ ^{of} the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. After payment has been made into this standby trust fund, the Trustee shall annually, at least 30 days before the anniversary date of receipt of payment into the standby trust fund, furnish to the Grantor and to the NRC a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days before the anniversary date of the establishment of the Fund. The failure of the Grantor to object in writing to the Trust within 90 days after the statement has been furnished to the Grantor and the NRC shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to the matters disclosed in the statement.

Trustee

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Grantor. (See Schedule C)

Section 13. Successor Trustee. Upon 90 days notice to the Grantor, the Trustee may resign; upon 90 days notice to the NRC and the Trustee, the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee, the successor accepts the appointment, the successor is ready to assume its duties as trustee, and the NRC has agreed, in writing, that the successor is an appropriate State or Federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. When the resignation or replacement is effective, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NRC, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A) or such other designees as the Grantor may designate by in writing amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the requests, and instructions by the NRC to the Trustee shall be in writing, signed by the NRC, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NRC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or NRC, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the NRC, or by the Trustee and the NRC if the Grantor ceases to exist. All amendments shall meet the relevant regulatory requirements of the NRC.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the NRC, or by the Trustee and the NRC, if the Grantor ceases to exist. Upon termination of

Trustee

Trustee

Signatories to this

Grantor's orders, requests, and instructions. If NRC issues orders, request, or instructions to the Trustee these

Agreement

or its designees

15

Trust

^{trust}
the ~~(Trust)~~ all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor or its successor.

Section 17. Immunity and Indemnification. ^{trust} The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this ~~(Trust)~~ or in carrying out any directions by the Grantor or the NRC issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the ~~Trust Fund~~, ^{trust fund} or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of The Commonwealth of Massachusetts.

Section 19. Interpretation and Severability. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement. *If any part of this Agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.*

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

AREVA NP Inc.
By: [Signature]
Title: VP + CFO

Attest:
By: [Signature]

STATE STREET BANK AND TRUST COMPANY
By: [Signature]
Title: Vice President

Attest: [Signature]

Schedule A

This Agreement demonstrates financial assurance for the following cost estimates or certification amounts for the following licensed activities:

U. S, Nuclear Regulatory Commission License Numbers

SNM - 1227

Name and Address of Licensee

AREVA NP Inc.
2101 Horn Rapids Rd.
Richland, WA 99352

Address of Licensed activity
2101 Horn Rapids Rd.
Richland, Washington 99352

Cost estimates for Regulatory Assurance Demonstrated by the Agreement

The cost estimates listed here were last adjusted and approved by NRC on date

Schedule B

Dollar Amount 37.4M

As Evidenced By Letter of Credit #

Schedule C

Name, address, phone number of Trustee
Trustee's fees shall be \$1,000 per year

Certificate of Events

State Street Bank and Trust Company
125 Sunnynoll Ct. Suite 200
Winston-Salem, NC 27106

Attention Trust Division

Gentlemen:

In accordance with the terms of the Agreement with you dated April 2008, I ^{day 1}

Secretary of AREVA NP Inc., hereby certify that the following events
have occurred:

1. AREVA NP Inc. is required to commence the decommissioning of its facility located at Richland, Washington (hereinafter called the decommissioning).
2. The plans and procedures for the commencement and conduct of the decommissioning have been approved by the United States Nuclear Regulatory Commission, or its successor, on _____ (copy of approval attached).
3. The Board of Directors of AREVA NP Inc. has adopted the attached resolution authorizing the commencement of the decommissioning.

Secretary of AREVA NP Inc.

Date

Certificate of Resolution

I, _____, do hereby certify that I am the Secretary of AREVA NP Inc., a Delaware corporation, and that the resolution listed below was duly adopted at a meeting of this Corporation's Board of Directors on _____, 20__.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of this corporation this _____ day of _____, 2008.

Secretary

Resolved, that this Board of Directors hereby authorizes the President, or such other employee of the Company as he may designate, to commence decommissioning activities at AREVA NP Inc.'s Richland, Washington facility in accordance with the terms and conditions described to the Board of Directors at this meeting and with such other terms and conditions as the President shall approve with and upon the advice of Counsel.

Letter of Acknowledgement

State of _____

To Wit: _____

City of _____

On this ____ day of _____, before me, a notary public in and for the city and State aforesaid, personally appeared _____, and she/he did depose and say that she/he is the _____ of _____, Trustee, which executed the above instrument; that she/he knows the seal of said association; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the association; and that she/he signed her/his name thereto by like order.

Signature of the Notary Public

My Commission Expires: _____