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September 14, 2009
CD09-0240

6/30/09
74FR 31317
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2009 SEP 17 AM 9:22
RULES AND DIRECTIVES BRANCH

Michael T. Lesar, Chief
Rulemaking and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Subject: Comments on Draft Regulatory Guide DG-1229, *Assuring the Availability of Funds for Decommissioning Nuclear Reactors*

Dear Mr. Lesar:

Energy*Solutions* has reviewed the subject draft regulatory guide. We are in agreement with the comments provided on behalf of the nuclear industry by the Nuclear Energy Institute (NEI) and with their position that the proposed changes contained in the draft regulatory guide are unnecessary. We propose that the detailed comments provided by NEI be incorporated by NRC into the regulatory guide.

The NRC has not provided adequate justification for the proposed changes, particularly those that would drastically shorten the time allowed to make adjustments to decommissioning funding amounts necessary to correct any identified shortfalls. We do not believe the recent market downturn provides that justification. As NEI observes, over 70% of the operating reactor decommissioning funds remained at or above required minimums despite the financial crisis. At least four funds identified by the NRC as requiring adjustment have recovered to the point where the NRC minimum is now exceeded. This provides further confirmation of the point made by NEI that this issue is most prudently addressed by taking into account the long-term investment horizons applicable to decommissioning funding.

The NEI letter points out the real costs associated with using parent guarantees or letters of credit to make up shortfalls. It is worth noting that in the case of the letter of credit, the costs described by NEI are conservative. The NEI cites the cost of a letter of credit as being approximately 4 percent of the assured value on an annual basis. This number represents the cost to a very large company with an excellent credit rating. It is likely that this cost could be even higher for some licensees.

Furthermore, the cost of a letter of credit also increases when credit is not readily available. This is precisely the circumstance likely to exist in a strongly negative market such as the one experienced in 2008. Even more troubling, because the availability of

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Template = ADM-013
E-RIDS = ADM-03
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letters of credit is also strongly influenced by the credit markets, it is possible that they would not be available at any price. Requiring licensees to make up shortfalls in a matter of months could force them into the credit market at precisely the wrong time when the safety risk the NRC wishes to protect against is decades away.

We appreciate the opportunity to comment on the draft regulatory guide. Questions regarding these comments may be directed to me at (301) 957-3770 or temagette@energysolutions.com.

Sincerely,

Thomas E. Magette, P.E.
Senior Vice President
Nuclear Regulatory Strategy

Cc: Aaron Szabo