

DPG 09-336

November 19, 2009

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

Docket No. 50-312
Rancho Seco Nuclear Generating Station
License No. DPR-54

**RANCHO SECO NUCLEAR GENERATING STATION
REQUEST FOR EXEMPTION FROM 10 CFR 50.75(h)(2)**

Attention: John Hickman

In accordance with Title 10, Code of Federal Regulations (CFR) section 50.12 "Specific Exemptions", the Sacramento Municipal Utility District (SMUD) is requesting a one-time exemption from 10 CFR 50.75(h)(2), which limits withdrawals from a Decommissioning Trust Fund to decommissioning expenses only. Approval of this request would allow SMUD to make a one-time withdrawal of unspent, excess decommissioning funds in the amount of \$18,698,000 from the Trust.

On September 25, 2009, the Nuclear Regulatory Commission (NRC) approved removal of a portion of the Rancho Seco Nuclear Generating Station (Rancho Seco) site from the 10 CFR Part 50 license DPR-54. This effectively signified the completion of Phase I of the license termination process at Rancho Seco as described in the NRC-approved License Termination Plan for Rancho Seco.

With the completion of Phase I of decommissioning, all projects that have historically presented a major cost risk at power reactor decommissionings have been completed. As of the completion of Phase I, the Decommissioning Trust Fund contained over \$38 MM. Attached to this letter is Table 2 of the 2009 Decommissioning Cost Estimate Update, which summarizes all future anticipated decommissioning costs and provides the schedule of expenditures. Compared to \$21.8 MM estimated cost for the remaining license termination activities, the Trust is significantly over-funded. These funds are not simply "excess" funds, but represent money that would have been spent and subsequently withdrawn from the Trust, if not for SMUD completing decommissioning in a cost effective manner.

To illustrate the extent to which SMUD performed decommissioning at costs well below industry experience, the estimated and actual costs are compared below for the Reactor Vessel and Reactor Vessel Internals projects. These projects were selected because they represent activities with historically high cost risk for large reactor decommissionings.

Actual vs. Estimated Costs (\$1,000's)

| Project | Estimated Costs | Actual Costs | Unspent Funds |
|--------------------------|-----------------|--------------|---------------|
| Reactor Vessel | \$19,301 | \$5,041 | \$14,260 |
| Reactor Vessel Internals | \$32,741 | \$18,313 | \$14,428 |

The current book value of the Decommissioning Trust Fund is \$38,650,428. Given market rates at November 20, 2009, the expected one-time withdrawal amount (separate from any reimbursement of actual decommissioning expenses) is \$18,698,000. This leaves \$19,952, 428 in the Decommissioning Trust Fund, which will be invested in U.S. Treasury Strips (an acronym for Separate Trading of Registered Interest and Principal Securities). Treasury Strips are zero coupon instruments which are bought at a discount. The U.S. Treasury Strip investments will be structured to mature on November 15th of each year in the amount of the estimated decommissioning costs as presented in the attached table. The use of Strips will completely eliminate reinvestment risk and will provide an exact amount of funds at maturity. U.S. Treasury securities are considered risk free investments and provide more than reasonable assurance that cash flows will be available to meet the estimated decommissioning expenses.

In summary, all decommissioning activities with significant cost risk have been completed well below estimated costs, and the Trust Fund will still provide reasonable assurance that remaining decommissioning costs will be funded following a responsible, one-time withdrawal. As detailed below, SMUD's exemption request meets the standards of 10 CFR 50.12, and should be approved.

Bases for Specific Exemption Request

10 CFR 50.12(2) states in pertinent part that:

"The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever . . .

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;..."

10 CFR 50.75(a) begins: "This section establishes requirements for indicating to NRC how a licensee will provide reasonable assurance that funds will be available for the

decommissioning process.” 10 CFR 50.75(h)(2) states, in part: “Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, **are restricted to decommissioning expenses** or transfer to another financial assurance method acceptable under paragraph (e) of this section **until final decommissioning has been completed.**” (emphasis added).

Arguments for Specific Exemption

Addressing 10 CFR 50.12(2)(ii): As demonstrated previously, a withdrawal not strictly defined as “decommissioning expenses” can be made from the Trust that will still provide “reasonable assurance that funds will be available for the decommissioning process.” Therefore, application of the regulation in this particular circumstance does not serve the underlying purpose of the rule.

By the same arguments, it is clear that application of 10 CFR 50.75(h)(2) (i.e., disallowing a withdrawal) is not necessary to achieve the underlying purpose of the rule: it is very clear that a responsible withdrawal can be made from the Trust that still provides reasonable assurance that funds will be available for the remaining decommissioning process.

Addressing 10 CFR 50.12(2)(iii): SMUD acted responsibly in complying with the intent of 10 CFR 50.75 by funding the Decommissioning Trust Fund to the level required to complete all decommissioning activities at industry standard costs. However, it has been demonstrated that SMUD was able to complete decommissioning at costs well below industry benchmarks. Note that SMUD is not-for-profit, and is publicly owned. By keeping costs down, SMUD was acting responsibly on behalf of its owner-ratepayers. However, a strict application of 10 CFR 50.75(h)(2) would penalize SMUD and its owner-ratepayers by locking away the millions of dollars that remain unspent because of the cost-effective decommissioning of Rancho Seco, ultimately resulting in higher electric costs for the community. Because the intent of the regulations can clearly be met by allowing a responsible withdrawal from the Trust Fund, strict application of the rule would result in an undue hardship to SMUD’s owner-ratepayers that could not have been anticipated when the rule was promulgated.

Summary

Clearly, “special circumstances” are present according to 10 CFR 50.12. It has also been shown that application of 10 CFR 50.75(h)(2) does not serve the underlying purpose of the rule, nor is strict application of the rule necessary to achieve reasonable assurance that future decommissioning costs are funded. By acting responsibly in both fully funding the Trust, and completing decommissioning activities in a cost-effective manner, strict application of the rule would increase costs to SMUD owner-ratepayers by unnecessarily

preventing access to funds that are not needed to provide reasonable assurance that all decommissioning activities will be fully funded.

If you, or members of your staff, have questions requiring additional information or clarification, please contact Einar Ronningen at (916) 732-4817.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Flake", written over the printed name.

Scott Flake, P.E.
Manager, Power Generation

cc: John Hickman, NRC Headquarters
NRC, Region IV

Attachments: Table 2 from the 2009 Decommissioning Cost Estimate Update

Table 2
Decommissioning Cost Estimate - Phase II
(Thousands of 2009 Dollars)

| DESC | OVERSIGHT | Waste Disposal | | Contract STAFF | CNTGCTY | % CNTGCTY | TOTAL |
|-----------------------------|-----------|----------------|--------|-------------------|---------|--------------|--------|
| | | SHIP | BURY | | | | |
| IOSB (part 50 license) | | | | | | | |
| Stored Waste Oversight | 2,259 | | | | | | 2,259 |
| Resin Disposal | | 115 | 3,019 | 143 | | | 3,277 |
| RVI Disposal | | 337 | 6,550 | 396 | 982 | 13% | 8,265 |
| Part 50 License termination | | 4 | 26 | 2,760 | 138 | 5% | 2,928 |
| Totals | 2,259 | 456 | 9,594 | 3,299 | 1,120 | 7% | 16,730 |
| ISFSI (part 72 license) | | | | | | | |
| GTCC Disposal | | | 2,386 | | 808 | 34% | 3,195 |
| Part 72 License termination | | 15 | 286 | 1,534 | | | 1,835 |
| Totals | | 15 | 2,672 | 1,534 | 808 | 19% | 5,031 |
| TOTAL COST (CE 2009) | 2,259 | 471 | 12,267 | 4,834 | 1,928 | 10% | 21,761 |

Table 2
Decommissioning Cost Estimate - Phase II
(Thousands of 2009 Dollars)

| DESC | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020-2026 | 2027 | 2028 | TOTAL |
|-----------------------------|------|------|------|-------|------|------|------|------|------|------|------|-----------|-------|--------|--------|
| IOSB (part 50 license) | | | | | | | | | | | | | | | |
| Stored Waste Oversight | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 791 | 113 | 113 | 2,259 |
| Resin Disposal | | | | 3,277 | | | | | | | | | | | 3,277 |
| RVI Disposal | | | | | | | | | | | | | | 8,265 | 8,265 |
| Part 50 License termination | | | | | | | | | | | | | | 2,928 | 2,928 |
| Totals | 113 | 113 | 113 | 3,390 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 791 | 113 | 11,306 | 16,730 |
| ISFSI (part 72 license) | | | | | | | | | | | | | | | |
| GTCC Disposal | | | | | | | | | | | | | 3,195 | | 3,195 |
| Part 72 License termination | | | | | | | | | | | | | 918 | 918 | 1,835 |
| Totals | | | | | | | | | | | | | 4,113 | 918 | 5,031 |
| TOTAL COST (CE 2009) | 113 | 113 | 113 | 3,390 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 791 | 4,226 | 12,224 | 21,761 |