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SENIOR VICE PRESIDENT
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August 4, 2010

The Honorable Gregory B. Jaczko
Chairman
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Mail Stop 016 C1
Rockville, MD 20852

Subject: SECY-10-0084: Explanation of Changes to Revision 2 to Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors"

Dear Mr. Chairman:

The Nuclear Energy Institute (NEI¹), on behalf of the nuclear energy industry, is writing to express issues of significant concern related to the NRC staff's proposed changes to its decommissioning funding guidance for nuclear reactors contained in Regulatory Guide 1.159. Specifically, NEI believes that (1) the NRC staff failed to provide meaningful notice and opportunity for comment by not disclosing the basis for the proposed changes to the frequency of funding adjustments in Draft Guide 1229 until after the notice and comment period had concluded; (2) the basis provided by the NRC staff in SECY-10-0084 does not support categorical guidance directing merchant licensees to adjust decommissioning funds annually and within 3 months of the annual recalculation of the regulatory minimum required by 10 C.F.R. § 50.75(b); and (3) the NRC staff has not adequately justified a categorical prohibition on the use of the net present value method for parent guarantees.

These three points are discussed in greater detail below. NEI would also like to express a general concern regarding the manner in which our comments were dispositioned by the NRC staff. Specifically, we note that the enclosure containing our detailed comments covered three substantive topics, suggested several editorial changes, and spanned 12 pages. As SECY-10-0084 explains, the staff received four additional comment letters from industry stakeholders supporting NEI's

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

comments and received no comments supporting the proposed changes.² NEI's 12 pages of comments covering three substantive topics spawned an NRC staff response to no less than 26 individual comments, which consumed over 45 pages of text. While NEI recognizes the staff's effort to offer a robust response, it appears that the result of such fine parsing has been to lose the context of our original comments. Thus, NEI encourages the Commission to review our comments in their entirety prior to giving the staff direction on the proposals contained in SECY-10-0084.

I. Meaningful Notice and Comment.

As explained in SECY-10-0084, the NRC staff noticed proposed changes to Regulatory Guide 1.159 in the *Federal Register* on June 30, 2009, through issuance of Draft Guide 1229.³ One of the changes proposed in Draft Guide 1229 is to increase the frequency of funding adjustments necessary to correct any estimated shortfalls in licensees' decommissioning funds.⁴ Regulatory Guide 1.159 currently recommends merchant licensees make such adjustments "at least once every two years, in conjunction with the biennial report."⁵ In Draft Guide 1229, however, the NRC staff proposed to modify the "at least once every two years" language, recommending instead that for merchant licensees such adjustments "should occur within 3 months of each end-of-year recalculation of the minimum required funding assurance level . . . (i.e., by March 31 of the following year)."⁶ Further, the staff concluded that, under 10 C.F.R. §§ 50.75(b)(1) and (b)(2), a "licensee *must* make any necessary adjustment annually, which requires that the necessary adjustments to the licensees financial assurance amount(s) and mechanism(s) have been made no later than by the end of the year (i.e., by December 31 of the following year)."⁷ Other than its statement that annual funding adjustments are required by § 50.75(b), the staff offered no basis for the proposed changes to its guidance on the frequency of funding adjustments.

NEI's comments challenged the staff's statement that annual funding adjustments are *required* by § 50.75(b). To the contrary, NEI demonstrated that (1) the Commission made a deliberate decision in

² SECY-10-0084, *Explanation of Changes to Revision 2 to Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors,"* at pp. 2-3 (SECY-10-0084).

³ Notice of Issuance and Availability of Draft Regulatory Guide, DG-1229, 74 Fed. Reg. 31,317 (June 30, 2009).

⁴ Draft Regulatory Guide 1229, *Assuring the Availability of Funds for Decommissioning Nuclear Reactors*, at pp. 13 (Draft Guide 1229).

⁵ Regulatory Guide 1.159, *Assuring the Availability of Funds for Decommissioning Nuclear Reactors*, Rev. 1, at pp. 1.159-11 (2003)(Reg. Guide 1.159). Power reactor licensees are required to report on the status of their decommissioning funding by March 31 of odd-numbered years. 10 C.F.R. § 50.75(f). This report is referred to as the "biennial report." Power reactor licensees are also required to recalculate the minimum decommissioning funding amount annually, pursuant to 10 C.F.R. § 50.75(b). Licensees must provide decommissioning funding assurance that equals or exceeds this "regulatory minimum."

⁶ Draft Guide 1229, at pp. 13 (emphasis added).

⁷ *Id.*

1988 to address the frequency of funding adjustments in guidance, not in its decommissioning funding regulations; and (2) that the Commission had specifically considered and rejected annual funding adjustments for merchant licensees in a previous revision to Reg. Guide 1.159.⁸ Thus, any reliance on §§ 50.75(b)(1) or (2) to suggest that annual adjustments of actual funds are compelled by the regulations is wholly misplaced. Because the staff's interpretation of § 50.75(b) was inconsistent with the Commission's past statements on funding adjustments, NEI argued that proposing such a change without any explanation of the agency's basis, or even a recognition that the agency was in fact changing position, was (at the very least) in tension with the notice and comment requirements of the Administrative Procedure Act.

In SECY-10-0084 the staff acknowledges that the Commission's long-standing position has been to handle the frequency of funding adjustments in guidance.⁹ Nonetheless, the staff did not directly address NEI's comment challenging its position that annual funding adjustments are required by § 50.75. Citing general statements from the Commission's 1996 rulemaking indicating that licensees are required to provide financial assurance "at any time" during the life of the facility, the staff also seems to take the position that the proposed change to Reg. Guide 1.159 does not constitute a change in agency policy.¹⁰

With respect to the staff's assertion that the Commission's regulations *compel* annual funding adjustments, NEI notes that if the general statement from the 1996 rulemaking cited by the staff was intended to mean that annual funding adjustments are *required*, then the Commission would have been *compelled* to adopt guidance directing licensees to correct funding shortfalls on an annual basis when it last considered the issue in 2002 – six years after the rulemaking upon which the staff rely. Instead, as the staff acknowledges, the Commission adopted the "at least once every two years" language that is currently contained in Reg. Guide 1.159. Thus, the basis for the position articulated in Draft Guide 1229 is clearly incorrect.

Further, the staff's conclusion that the changes proposed in Draft Guide 1229 are not a substantial change in the agency's interpretation of § 50.75 is meritless. This conclusion ignores the fact that in 2002 the agency took a definitive, specific position on this issue when it published Revision 1 to Reg. Guide 1.159, which directs merchant licensees to correct funding "at least once every two years, in conjunction with the biennial report." Stakeholders are entitled to a clear explanation of the regulatory basis for changes in agency position on compliance-related issues and NEI believes that

⁸NEI Comment Letter from L. Kass (NEI), to M. Orr (NRC), *Revision to Comments on Draft Regulatory Guide DG-1229, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," June 2009*, (Sept. 10, 2009), Enclosure at pp. 5-6 (ML092590128)(NEI Comment Letter). NEI did not submit "three versions" of its comment letter, as asserted by the NRC staff in SECY-10-0084. See SECY-10-0084, Enclosure 2 at p. 8. Rather, NEI submitted timely comments on September 9, 2010 (ML092590127) consisting of a cover letter and enclosure. The next day, September 10, 2010, NEI submitted a correction to the enclosure. The third letter cited by the NRC staff, dated September 21, 2009 (ML092930272), notified the Commission that the NRC staff was inappropriately applying the modified guidance prior to completion of the notice and comment process.

⁹ SECY-10-0084, Enclosure 2 at pp. 8.

¹⁰ SECY-10-0084, Enclosure 2 at pp. 7.

the explanation provided in SECY-10-0084 is nonresponsive to its comments on the regulatory position proffered in Draft Guide 1229.

Without addressing NEI's position on § 50.75(b), the staff offers – for the first time – a new basis for the proposed modification to Reg. Guide 1.159: changed circumstances.¹¹ Specifically, the NRC staff asserts that while annual adjustments were considered and rejected in 2002, changed circumstances now warrant reconsideration and a change of position on this issue. NEI's substantive response to the staff's changed circumstances argument is discussed below. From a procedural standpoint, NEI assumes that the staff considered such changed circumstances in developing the new interpretation published in Draft Guide 1229 last June.¹² If this is the case, NEI believes that the staff should have explicitly recognized that it was changing position and explained its "changed circumstance" basis in the notice announcing the availability of Draft Guide 1229 for comment. This would have allowed meaningful stakeholder comment by providing the staff's actual basis for proposing the change. Instead, the staff offered the incorrect basis described above, leaving stakeholders with little (other than the proposed changes themselves) to inform their comments. Changes to long-standing agency positions should be explicitly identified and fully explained in documents that the staff publishes for public comment. To the contrary, the process employed by the staff here is inefficient and opaque because the staff's motivation for changing position was not revealed until after the resolution of public comments. As a result, the staff and the Commission will not have the full benefit of stakeholder comment on the newly proffered basis contained in SECY-10-0084.¹³

II. Annual Funding Adjustments for Merchant Plants.

Procedural issues aside, the new "changed circumstances" argument described by the NRC staff in SECY-10-0084 does not support categorical guidance directing merchant licensees to adjust decommissioning funding annually. Specifically, the staff asserts that the "two year adjustment period is less effective than when first issued," thus annual adjustments are appropriate.¹⁴ In support of this conclusion the staff points out that in 2009, most licensees that experienced shortfalls did not provide plans to cover shortfalls until requested by the NRC. While the staff may have desired more, there is no regulation requiring that licensees file a separate report detailing future plans to address funding shortfalls. In March of 2009, licensees appropriately reported the information required by § 50.75(f) in their biennial reports and worked closely with the NRC staff to resolve shortfalls. Further, NEI's proposed changes to Section 2.1.5 of Reg. Guide 1.159 – which the staff rejected – actually recommended adoption of explicit guidance directing licenses to provide

¹¹ SECY-10-0084, Enclosure 2 at pp. 8-9.

¹² The other possibility is, of course, that the staff developed its changed circumstances basis as an ad hoc response to NEI's comments on Draft Guide 1229. If this is the case, then it appears that the Staff had no valid basis for proposing these changes in the first instance.

¹³ While NEI makes substantive arguments challenging the staff's "changed circumstance" basis below, our response in this letter is necessarily constrained by the need to provide this information in time for the Commission's consideration in voting on SECY-10-0084.

¹⁴ SECY-10-0084, Enclosure 2 at pp. 9.

such plans when shortfalls are reported. Specifically, NEI's comments proposed modifying Section 2.1.5. to read:

[T]he licensee must adjust the amount of financial assurance being provided, such that it meets or exceeds the required amount.

If a biennial decommissioning funding status report is filed in a particular year, such report, which is due to be filed by March 31 of the filing year, should indicate that necessary adjustments to the licensee's financial assurance amount(s) and mechanism(s) have been made; *or include a plan describing when such adjustments will be made and the financial assurance mechanisms the licensee anticipates using to make such adjustments.* The NRC will review such plans to correct estimated shortfalls on a case-by-case basis to determine whether the timing and financial assurance mechanisms proposed by the licensee provide adequate decommissioning funding assurance. The NRC will consider factors, such as the amount of the estimated shortfall, the date the funds will likely be necessary, and current market conditions to evaluate the proposed timing of such adjustments.¹⁵

If the staff is concerned that licensees did not proactively provide plans to correct shortfalls with their biennial reports, it is difficult to understand why they rejected NEI's suggested revision that would direct licensees to provide such plans.

The staff also asserts that because more licensees reported shortfalls in 2009 than in 2003, more frequent funding adjustments are in order.¹⁶ But this conclusion ignores that fact that the large number of the shortfalls reported in 2009 was the result of the worst financial downturn in the United States since the Great Depression. These unique circumstances impacted the entire international financial community and are not indicative of a systematic failure in the management of decommissioning trust funds, nor should they be interpreted as representing a negative "trend" in the management of such funds. Rather, it is a testament to the rigor of the present regulatory scheme that, despite the worst financial crisis to hit the United States in over 75 years, decommissioning funding assurance remained adequate for approximately 75 percent of the nation's nuclear power facilities and 21 of the 27 reported shortfalls were corrected less than a year after 2009 biennial reports were filed. Thus, the current regulatory framework and guidance held up extraordinarily well, despite difficult circumstances. The Commission should also consider that 11 of the 27 reported shortfalls were corrected within 8 months of the March 2009 biennial reports through a combination of market recovery, additional SAFSTOR analyses, and clarifications provided to the NRC staff.¹⁷ Importantly, these apparent funding shortfalls were corrected within a relatively short period of time without any additional cash contributions, guarantees, or other surety mechanisms. Thus, NEI disagrees that an increase in the number of shortfalls reported in 2009

¹⁵ NEI Comment Letter, Enclosure at pp. 8 (emphasis added).

¹⁶ SECY-10-0084 incorrectly states that in 2009 75 percent of licensees experienced shortfalls. SECY-10-0084, Enclosure 2 at pp. 9 ("In 2009, 75 percent of licensees had shortfalls, and 1 licensee resolved its shortfall in conjunction with its biennial decommissioning fund status report."). As stated elsewhere in the SECY, in fact, approximately 75 percent of licensees maintained adequate decommissioning funding assurance despite the 2008 financial crisis. *See, e.g.,* SECY-10-0084, Enclosure 2 at pp. 10.

¹⁷ NEI Letter from A. Pietrangelo (NEI), to G. Jaczko (NRC Chairman), November 4, 2009.

indicates that decommissioning funds must now be adjusted annually (i.e., within 3 months of the annual recalculation of the regulatory minimum).

With respect to the timeliness of licensee responses to estimated shortfalls, the staff also implies that in 2009 fewer licensees conformed to the current guidance provided in Revision 1 to Reg. Guide 1.159, than in 2003.¹⁸ NEI disagrees with the implication that licensees did not conform to the guidance provided in Revision 1 of Reg. Guide 1.159 following the reporting of shortfalls in March of 2009. That guidance states that:

In every case, needed adjustments to the amount of funds set aside should be made at least once every two years, in conjunction with the biennial report, for licensees who are no longer rate regulated or do not have access to a non-bypassable charge. . . .¹⁹

NEI believes that the best and most reasonable reading of this guidance is that shortfalls identified in a biennial report (e.g., March 2009) must be corrected by the time the next biennial report is due two years later (e.g., March 2011). This interpretation is reasonable because – from a regulatory standpoint – funding shortfalls are actually identified through submittal of the biennial reports required by § 50.75(f), not through recalculation of the regulatory minimum amount required by § 50.75(b). Even if NEI agreed with the staff's interpretation of Revision 1 of Reg. Guide 1.159, it is unclear why non-conformance with such guidance necessarily requires modification to direct more frequent funding adjustments. Specifically, the purpose of NRC's interpretive guidance – including Reg. Guide 1.159 – is to articulate one acceptable method of complying with agency requirements. Guidance documents do not impose requirements, nor do they limit a licensee's ability to use alternative approaches that differ from those established in the guidance. Thus, nonconformance with existing guidance does not necessarily warrant modifying such guidance to be more restrictive.

Finally, it is important to briefly address the staff's comments regarding the premature shutdown of Connecticut Yankee. Theoretically, premature shutdown of a nuclear power plant – either regulated or merchant – can present challenges from a decommissioning standpoint. But, as explained in NEI's comments, the NRC and licensees have successfully dealt with these situations on the rare occasions that they have actually arisen.²⁰ Also, while there are important differences between the regulated and merchant operating environments, the NRC's current regulatory framework accounts for these differences through mechanisms, such as restricting the use of external sinking funds by merchant power plant operators. In addition, while the regulations are designed to provide reasonable assurance of adequate decommissioning funding throughout the life of a plant, they are structured upon the reasonable assumption that plants will operate to the end of licensed life. For example, even plants operating in a merchant environment – which may not use external sinking funds as the exclusive mechanism to provide decommissioning funding assurance²¹ – may credit anticipated earnings through the end of licensed life to demonstrate adequate decommissioning

¹⁸ SECY-10-0084, Enclosure 2 at pp. 9.

¹⁹ Reg. Guide 1.159, Rev. 1, at pp. 1.159-11 – 1.159-12.

²⁰ NEI Comment Letter, Enclosure at pp. 3.

²¹ See 10 C.F.R. § 50.75(e)(1)(ii).

funding assurance.²² Given the operating history of the great majority of nuclear power plants in the United States, NEI believes that this approach is appropriate and provides the Commission with *reasonable* decommissioning funding assurance. Thus, theoretical premature shutdown should not drive Commission policy in this area.

Finally, NEI would like to stress that our comments on Draft Guide 1229 should not be read to suggest that fund managers will fail to exercise a prudent investor standard of care, or otherwise intentionally mismanage decommissioning trust funds. The point stressed in our comments, and communicated repeatedly by industry representatives, is that requiring funding adjustments too often could have the unintended consequence of decreasing fund quality over the long term by prompting an inordinate focus on shorter-term investment goals. A short-term focus could push the trust fund managers to change the portfolio mix, to yield a higher return in order to recover from the low in asset values over the same timeframe (as opposed to a multi-year average of asset values) – unnecessarily resulting in a higher risk profile than is necessary to achieve the long-term investment goal. In addition short-term focus could also result in tax inefficiencies (by unnecessarily causing the fund managers to trade excessively), which over the long haul, would have a negative effect on the health of the funds. Indeed, compliance aside, it is in the licensee's best business interest to make effective long-term investment decisions, so that decommissioning activities are properly funded when undertaken.

In sum, NEI recognizes that nuclear power plants are required to be funded to at least the minimum amount described in 10 C.F.R. § 50.75(c). Funding to the minimum amount is an important compliance issue and licensees have treated it as such. The issue raised by the NRC staff's proposed modifications to Reg. Guide 1.159 is not whether licensees must be funded at a level that meets or exceeds the regulatory minimum: that is a given. Rather, the issue is the timing of corrections to decommissioning funds, in the relatively rare instances when shortfalls occur. NEI's comments on Draft Guide 1229 reflect our position that the NRC should continue to deal with such situations in a rational and reasoned way by requiring licensees to correct shortfalls as expeditiously as possible, but without imposing unnecessary – and potentially counterproductive – timeliness standards for funding adjustments. Alternatively, the Commission could maintain the current guidance, which requires adjustment of funding amounts by merchant licensees "at least once every two years, in conjunction with the biennial report." However, the staff's proposal to require annual funding adjustments should not be adopted without first renoting the Draft Guide for public comment so that the staff and Commission may have the benefit of stakeholder comment on the staff's "changed circumstance" basis.

III. The Net Present Value Approach to Parent Guarantees.

As NEI's comments point out,²³ and the staff apparently acknowledges,²⁴ the NRC has previously approved use of the net present value method to calculate the amount of decommissioning funding assurance to be provided by parent guarantees in several license transfer cases. Under this previously-approved approach, a licensee was required to provide a guarantee sufficient to cover the

²² SECY-10-0084, Enclosure 2 at pp. 5.

²³ NEI Comment Letter, Enclosure at pp. 11.

²⁴ SECY-10-0084, Enclosure 2 at pp. 41.

current value of "prepaid" funds that would be required in order to satisfy the regulatory minimum by the end of the plant's operating life. The guarantee had to include terms that would provide for an annual readjustment of the guarantee amount in order to account for an updated calculation of the gap between existing prepaid funds and the amount of prepaid funds that would be required at the end of the plants operating life. This was acceptable because if the guarantee amount was called upon prior to the end of the operating life of the plant, the amount of the guarantee would be paid into the trust. As such, the value of the guarantee would be comparable to the value of "prepaid" assets in the trust, making the two guarantee methods effectively equivalent.

SECY-10-0084 ignores the license transfer precedent, stating that because these cases pre-date Office Instruction LIC-205, they somehow have "no value as precedent."²⁵ But LIC-205 does not even mention the words "guarantee" or "guaranty," let alone purport to establish the manner in which the guarantee amount should be established. LIC-205 neither approves nor disapproves adherence to the license transfer precedent. Further, as the NRC has readily asserted in other contexts, NRR office procedures are not regulatory requirements, serve only as an internal guide, and should not be relied upon as binding authority.²⁶ Thus, even if LIC-205 did address use of the net present value approach, that fact would not render NRC precedent allowing the use of such an approach invalid.

The discussion in SECY-10-0084 comparing a guarantee to a box of money buried in the ground illustrates the staff's flawed logic.²⁷ If called upon prior to the end of a plant's operating life, the guarantee amount would not be buried in a box. Rather, it would be deposited in the decommissioning trust fund, where it could generate earnings just like assets already in the fund. Alternatively, if the guarantee were not called upon, the terms of the guarantee would require an annual increase in the amount of the guarantee in order to keep pace with the earnings produced by assets already in the decommissioning fund. Thus, rather than being buried in a box, the guarantee obligation is required to grow over time, in order to keep pace with the amount eventually required at the end of the plant's operating life.

The NRC staff also dismisses the burden associated with carrying parent company guarantees (PGCs), asserting that the "cost of covering a shortfall on an annual basis is minimal using a PCG and is a very small percentage of net income using other guaranty methods."²⁸ The staff's position does not adequately consider the fact that in order to use a parent guarantee, licensees must meet the financial tests provided in Appendix A to 10 C.F.R. Part 30.²⁹ In the case of power reactor licensees, those financial tests require, in part, that parent companies to maintain either:

²⁵ *Id.*

²⁶ *See, e.g.*, NRC Form 757 Non-Concurrence Process, "Draft Regulatory Issue Summary 2005-02, Rev. 1," Attachment 3 "Response to Non-Concurrence Issues", at pp. 2 (May 19, 2009) ("NRR office procedures are not regulatory requirements and serve only as an internal guide. Thus, the non-concurring individual's deference to LIC 100 as authority is misplaced.").

²⁷ SECY-10-0084, Enclosure 2 at pp. 40-41.

²⁸ SECY-10-0084, at pp. 5.

²⁹ 10 C.F.R. § 50.75(e)(1)(iii)(B).

- Net working capital and tangible net worth at least six times the amount of decommissioning funds being assured by a parent company guarantee; or
- Tangible net worth at least six times the amount of decommissioning funds being assured by a parent company guarantee.³⁰

Appendix A also requires that after the initial financial test, the parent company must reapply and satisfy the test within 90 days after the close of each succeeding fiscal year. Further, if the parent company no longer meets the tests described in Appendix A, the licensee must notify the NRC of its intent to establish an alternate form of financial assurance and provide such alternate assurance within 120 days of the end of the fiscal year.³¹ Thus, maintaining sufficient net working capital and tangible net worth to meet the financial tests described in Appendix A would clearly have a financial impact on parent companies. Further, the severity of that impact is directly related to the amount of money that must be covered by the guarantee.

For example, assume an existing unit is scheduled to start decommissioning in 2040 and the licensee discovered a \$100,000,000 net present value shortfall due to a severe economic downturn. Under the staff's proposed approach, after applying the 2% earnings credit, the actual parent company guarantee amount required to cover the shortfall would be approximately \$181,000,000. The additional \$81,000,000 is significant because of the financial tests imposed by Appendix A. Specifically, a \$100,000,000 guarantee would require the parent company to maintain \$600,000,000 in net working capital and/or tangible net worth in order to continue to meet the financial tests. By comparison, a \$181,000,000 guarantee would require the parent company to maintain \$1,086,000,000 net working capital and/or tangible net worth in order to continue to meet the financial tests.

The NRC staff's categorical rejection of the net present value approach will have an even more pronounced negative impact in the case of new reactors. For example, a single large pressurized water reactor located in the Southern United States as of December 31, 2009, would need to provide decommissioning funding assurance of approximately \$405 million. Using the "prepayment" method, this could be covered by a decommissioning trust fund with assets of just \$171 million as of December 31, 2009. In order to put a parent guarantee in place for this amount (assuming the guarantee was conditioned upon annual adjustments as described above), a parent company would need to have \$1,026,000,000 in net working capital and/or tangible net worth in order to meet the financial tests. However, under the NRC staff's new approach to the guarantee, the amount of the guarantee would have to be the full \$405 million. In order to put a \$405,000,000 guarantee in place, the parent company would need to have \$ 2,430,000,000 in net working capital and/or tangible net worth in order to meet the financial tests, thus creating a substantial additional burden on the new plant project.

In sum, the staff's proposal to categorically reject use of the net present value approach to determining the amount of decommissioning funding to be provided via parent guarantees is unnecessary, inconsistent with precedent, and requires parent companies to maintain much greater net working capital and tangible net worth in order meet the required financial tests on an ongoing basis. Thus, NEI respectfully requests that the Commission direct the staff to allow the use of the

³⁰ 10 C.F.R. Part 30, Appendix A, ¶¶ 11.A.1(ii), 11.A.2(ii).

³¹ 10 C.F.R. Part 30, Appendix A, ¶ 11.C.

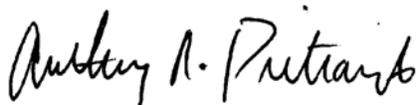
net present value approach in situations where the licensee can demonstrate that such guarantees supply assurance that is effectively equivalent to prepayment, using an existing approach such as annually recalculating the shortfall amount and adjusting the PCG amount accordingly.

IV. Conclusion.

Based on the discussion provided above, NEI respectfully requests that the Commission: (1) decline to adopt the proposed categorical guidance directing merchant licensees to correct decommissioning funding shortfalls annually, within 3 months of recalculating the regulatory minimum; and (2) decline to adopt the proposed guidance prohibiting use of the net present value in determining the amount of funding to be provided by the parent guarantee method.

We would welcome the opportunity to discuss this matter further with the commission. Please contact me if you have any questions.

Sincerely,



Anthony R. Pietrangelo

c: Commissioner Kristine L. Svinicki, U.S. Nuclear Regulatory Commission
Commissioner George Apostolakis, U.S. Nuclear Regulatory Commission
Commissioner William D. Magwood, IV, U.S. Nuclear Regulatory Commission
Commissioner William C. Ostendorff, U.S. Nuclear Regulatory Commission
Mr. R. William Borchardt, U.S. Nuclear Regulatory Commission
Mr. Stephen G. Burns, U.S. Nuclear Regulatory Commission
Mr. Thomas L. Fredrichs, U.S. Nuclear Regulatory Commission, NRR/DPR