



Nuclear Regulatory Commission  
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NRC000027

**NRC Staff Responses to Licensing Board's  
Additional Questions on Financial Assurance**

**Question No. 1:** *Regarding the letters of credit (LOC) that will be obtained by AES to provide financial assurance per the requirements in 10 C.F.R. §§ 30.35(f)(2), 40.36(e)(2), 70.25(f)(2), it is the Board's understanding that it would be the typical commercial practice relative to an LOC to at least specify the minimum capitalization and credit ratings for an acceptable LOC issuer. Are such specifications required for the AES LOC and if not, why not?*

**Response No. 1 (R. Przygodzki and K. Kline):** The NRC regulations do not have specific capitalization or credit rating requirements for an issuer of a letter of credit. However, NRC guidance contained in NUREG-1757, Volume 3, Appendix A, § A.10.1, "Qualifications of the Issuer" (NRC000096), states that "[a] bank issuing a letter of credit to a licensee should be a financial institution whose operations are regulated and examined by a Federal or State agency." Consistent with the guidance, we ensure the issuer of Letter of Credit is either federally regulated or state regulated. We defer to the expertise of the appropriate federal or state financial regulatory bodies to set and monitor the qualifications that the issuer must meet.

AES's draft LOC, in Appendix 10A (Chapter 10) of the Safety Analysis Report (SAR), Revision 2 (AES000037), relied upon the recommended language stated in NUREG-1757, Volume 3, Appendix A, § A.10.4, "Model Letter of Credit" (NRC000096). The draft LOC language has a requirement, wherein

[t]he bank shall give immediate notice to [AES] and NRC of any notice received or action filed alleging (1) the insolvency or bankruptcy of the financial institution or (2) any violation of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business. The financial institution also shall give immediate notice if the bank, for any reason, becomes unable to fulfill its obligation under the letter of credit.

Additionally, in SAR § 10.2.1 (AES000037), AES stated that its LOC would "be structured and adopted consistent with applicable NRC regulatory requirements and in accordance with NRC regulatory guidance contained in NUREG-1757...", and that AES intends that the "[LOC] shall be from a financial institution that is regulated by a U.S. Federal or State agency..."

**Question No. 2:** *To the degree that AES has committed to a “forward looking” approach to financial assurance as it relates to facility decommissioning and depleted uranium (DU) disposition, see Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Comm’n (NRC), NUREG-1951, [SER] for the [EREF] in Bonneville, County, Idaho at 10-7 (Sept. 2010) (ADAMS Accession No. ML102710296) [hereinafter SER], with respect to the annual updated cost estimate, will the new LOC designed to cover that updated estimate encompass the estimated maximum future cost of the following one-year period?*

**Response No. 2 (R. Przygodzki and K. Kline):** As stated in Chapter 10 of the SER (NRC000032), by license condition, AES will be required to provide financial assurance (e.g. an LOC) for facility decontamination and decommissioning, and DU disposition, as well as the respective forward-looking components (e.g. one-year period) for facility decontamination and decommissioning, and DU disposition. Under the same license condition, AES will be required at all times to have full financial assurance coverage, proportional to the then-current cost estimate, sufficient for decontamination and decommissioning of the facility and disposition of material that is at the site. In the event the applicant is unable or unwilling to perform decommissioning, the level of financial assurance provided is based on third-party contractor rates. Note that the estimated future costs covered by the financial instrument are not always a one-year period. For instance, the first instrument (e.g. an LOC) for DU disposition would cover the estimated cost to disposition the estimated DU tails generation for the first three years of facility operations (i.e. a three-year, forward-looking estimate and instrument).

**Question No. 3:** *If the LOC is not renewed at some point, how will the staff preserve the status quo regarding decommissioning costs to ensure that the amount of the LOC that the NRC holds (and can draw on) will be a sufficient amount to cover all decommissioning expenses? Also, does the staff have a contingency plan if the Department of Energy cannot (or will not) take the EREF’s DU?*

**Response No. 3 (R. Przygodzki and K. Kline):** As stated in Chapter 10 of the SER (NRC000032), by license condition, the total amount of financial assurance (FA) that AES will be required to provide will be equal to its then-current facility decommissioning cost estimate (forward-looking until the facility is at full capacity) and DU disposition cost estimate (forward-looking). Therefore, AES will have FA in the amount of its cost estimate at all times, sufficient to

cover all estimated decommissioning expenses. In the event that the LOC is not renewed, the regulations set forth in 10 C.F.R. §§ 30.35(f)(2)(i), 40.36(e)(2)(i), and 70.25(f)(2)(i) state that the "... [LOC] must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation." As stated in 10 CFR § 70.25(f)(2)(i), if the issuer of the LOC is not going to renew the LOC, it must give NRC and AES 90 days notice prior to the expiration date. The NRC can draw on the LOC and the funds will be placed into an existing Standby Trust Fund (Trust Fund), as required by 10 CFR § 70.25(f)(2)(ii). The purpose of this Trust Fund is to ensure that liquid assets, such as cash, are available if the financial instrument is drawn on by the NRC. As set forth in 10 CFR § 70.25(f)(2)(ii):

...[t]he trustee and trust must be acceptable to the [NRC.] An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

Based on the recommended Standby Trust Agreement language contained in NUREG-1757 Volume 3, Appendix A, § A.17.4 (NRC000096), the licensee and NRC can make payments out of the Trust Fund for decommissioning activities.

As set forth in Section 3113(a) of the United States Enrichment Corporation (USEC) Privatization Act, 42 USC § 2297h-11:

[The Department of Energy (DOE)], at the request of the generator, shall accept for disposal low-level radioactive waste, including depleted uranium if it were ultimately determined to be low-level radioactive waste, generated by...any person licensed by the Nuclear Regulatory Commission to operate a uranium enrichment facility under section 53, 63, and 193 of the Atomic Energy Act of 1954....

Therefore, the likelihood that the DOE cannot or will not take AES's DU is low. However, should DOE not take AES's DU, the proposed license condition, paragraphs e(2) and e(3), requires AES to provide continuous FA for accumulated DU tails – in addition to the FA for projected DU tails generation. See SER at 10-11 (NRC000032).

**Question No. 4:** *The cost estimate methodology used by AES and approved by staff, as described in the SER at 10-12 to -13, appears to rely upon European enrichment facility data. How were those estimates adapted to United States market conditions (e.g., labor, materials, transportation, etc.)?*

**Response No. 4 (R. Przygodzki and K. Kline):** Most of the cost estimate is attributed to the disposal of DU, which is based on a United States Department of Energy cost estimate denominated in United States Dollars and reflective of United States costs. With regard to waste disposal, in SAR Rev. 2 § 10.1.4 (page 10.1-4) (AES000037), AES stated that "...unit disposal costs in Table 10.1-10 are based on the current rates for compact members at the US Ecology site" and that "US Ecology rates include per container and per shipment charges as well as charges based on volume...." Therefore, these costs are denominated in United States Dollars and reflect United States costs. The labor rates provided in Table 10.1-8 of the SAR (AES000037), denominated in United States Dollars, are reasonable in comparison to labor rates published by the U.S. Bureau of Labor Statistics (BLS) for Salt Lake City, Utah (NRC000097 & NRC000098), and Billings, Montana (NRC000099 & NRC000100). These are two of the metropolitan areas for which BLS provides wage data, which are close to Bonneville, Idaho.

Additionally, the cost estimate for decommissioning would be updated in accordance with the proposed license condition in Chapter 10 of the SER (pages 10-9 to 10-12) (NRC000032), which includes an update prior to AES receiving radioactive material at the site. These updates would encompass changes in costs including site specific factors, labor rates, disposal rates, changes in inflation, and changes in the exchange rate. See SER at 10-12 (NRC000032). Once the facility is at full operations, AES will be required to update the facility cost estimate every 3 years and will be required to update its DU disposition cost estimate annually on a forward looking basis throughout the life of the facility. In addition, the applicant has included a 25% contingency factor in its cost estimate. See SAR Rev.2 § 10.1.1 (page 10.1-1), § 10.2.2 (page 10.2-2) and Table 10.1-14 (AES000037).