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To: Jaczko, Gregory
Cc: CMRSVINICKI Resource; Apostolakis, George; Crawford, Carrie; CMROSTENDORFF Resource; Borchartdt, Bill; Burns, Stephen; Boger, Bruce; Regan, Christopher; Fredrichs, Thomas
Subject: CORRECTED: Concerns Regarding the Conduct of the NRC's March 2 Decommissioning Funding Workshop
Attachments: 03-08-11_NRC_Concerns Regarding the Conduct of the NRC's March 2 Decommissioning Funding Workshop.pdf; 03-08-11_NRC_Concerns Regarding the Conduct of the NRC's March 2 Decommissioning Funding Workshop_Attachment 1.pdf; 03-08-11_NRC_Concerns Regarding the Conduct of the NRC's March 2 Decommissioning Funding Workshop_Attachment 2.pdf

March 8, 2011

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

Subject: Concerns Regarding the Conduct of the U.S. Nuclear Regulatory Commission's March 2 Decommissioning Funding Workshop

Dear Mr. Chairman:

The Nuclear Energy Institute (NEI^[1]), on behalf of the nuclear energy industry, is writing to express issues of significant concern related to the conduct of the recent NRC workshop on Decommissioning Funding held on March 2, 2011.

Last October, SRM-SECY-10-0084 directed the staff to hold a workshop to engage stakeholders and develop an options paper for the Commission regarding use of the net present value (NPV) method. This workshop was conducted last week on March 2. Based on the presentations and discussions at the workshop, we have significant concerns regarding the staff positions on the NPV method and the process for updating NUREG 1307.

^[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.

As an example, a presentation delivered by NRC staff stated that the net present value approach to parent guarantees is not permitted by § 50.75 (see attached presentation at slides 12-16). Therefore, the presentation concludes that regulatory dispensation – either in the form of an exemption or special approval pursuant to § 50.75(e)(vi) – would be required in order to use the net present value approach. To the contrary, § 50.75(e)(1)(iii)(B) allows licensees to provide financial assurance in the form of a “parent guarantee of funds for decommissioning costs based on a financial test.” The only condition placed on use of this method is that the guarantee and financial test must be as contained in appendix A to 10 CFR part 30. Appendix A does not address how the value of the guarantee is to be calculated (*i.e.*, whether the net present value approach is acceptable). Further, as the Commission noted in SRM-SECY-10-0084, the NRC has approved the net present value approach to parent guarantees in several license transfer cases. The staff presentation points out that these approvals were issued pursuant to § 50.75 (e)(iii)(B). The staff then asserted that these precedents were an “incorrect application of the regulation” (see attached presentation at slide 12). The position contained in the presentation disregards agency precedent and is in tension with SRM-SECY-10-0084, which explicitly recognized the NRC’s license transfer precedent approving the use of the net present value method. NEI is concerned that the NRC staff would publicly disregard agency precedent established in three license transfer decisions and categorize them as erroneous and inconsistent with the Commission’s regulatory requirements.

During the discussion of proposed changes to NUREG-1307, slide 5 of the presentation warned that the NRC staff plans to change the vendor/direct disposal ratio from 100% to 70/30 with a potential cost impact of \$50-\$70 million per licensee. A 100% vendor option is currently allowed. As one of the licensees in the audience pointed out, industry would logically use a 100% vendor approach to decommissioning unless a cheaper direct disposal option can be identified, therefore supporting the 100% assumption. Slide 6 indicates that the staff is considering a higher cost for low level waste disposal when the Texas compact numbers are released. Industry representatives present in the audience urged the staff to engage in discussions about private contracts and negotiated rates that they could use to inform their pricing models since the publicly available pricing information may be higher than negotiated options and there is likely more cost certainty than the staff knows. In response to a request for a public comment period on the proposed changes, the audience was informed that this is not required for the NUREG and the workshop should serve as public notice. This approach is unacceptable. NUREG-1307 is explicitly referenced in 10CFR 50.75(c)(2), which states that the escalation factor for waste burial in the minimum funding formula “is to be taken from NRC report NUREG-1307.” Thus, changes to the NUREG are effectively changes to the rule and should be noticed for public comment. This is especially important in cases such as this, where the staff predicts that changes to the NUREG could result in the minimum amount required for decommissioning funding assurance increasing by \$50 to \$70 million per reactor licensee. At best, this practice is grossly inconsistent with the Commission’s Principles of Good Regulation; at worst it is a violation of the Administrative Procedure Act.

In closing, we would like to reiterate that a 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 do not indicate 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 performed extraordinarily well, despite difficult circumstances. Importantly, many of 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 should serve as the basis for changes to the guidance, much less to the regulations, without a public comment period.

NEI will be providing a comprehensive set of comments on the workshop by the April 4, 2011, due date. In the meantime, we respectfully request that the Commission ensure that the Principles of Good Regulation and its commitment to transparency are applied to the staff’s activities in the area of decommissioning funding going forward. In this vein, we believe that a public correction of the statements regarding the validity of the NRC’s license transfer precedent and provision of opportunity for public comment on NUREG-1307 are necessary.

We would welcome the opportunity to discuss this matter further with the Commission and appreciate your attention to these issues. Please contact me if you have any questions.

Sincerely,

Anthony R. Pietrangelo
Senior Vice President and Chief Nuclear Officer

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