



NUCLEAR ENERGY INSTITUTE

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April 4, 2011

Mr. Thomas L. Fredrichs
Senior Advisor for Licensee Financial Policy
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, MD 20852

Subject: Industry Comments on March 2 Workshop on Decommissioning Funding Assurance for Nuclear Reactors

Project Number 689

Dear Mr. Fredrichs:

The Nuclear Energy Institute (NEI),¹ on behalf of the nuclear energy industry, is pleased to provide comments on the workshop on decommissioning funding assurance for nuclear reactors that was held at NRC headquarters on March 2, 2011.

The industry had significant concerns regarding the conduct of the workshop as explained in NEI's March 8, 2011, letter to Chairman Jaczko. That letter is enclosed for your reference and the comments presented therein are hereby incorporated into these comments. In addition to the significant issues described in the NEI's March 8 letter, NEI provides the following additional comments and clarifications for your consideration.

Overstating the decommissioning liability in parent company guarantees (PCGs) is a burden to licensees. As Mr. Rejji Hayes of Exelon described in his presentation, which included a question and answer period that spanned over 45 minutes, the theory that using a future value approach imposes no costs on licensees is inappropriately simplistic. As Mr. Hayes explained, although there is no direct monetary fee for using a PCG, overstatement of the PCG liability limits operational and financial flexibility and results in significant administrative costs. In addition, the net present value approach to calculating decommissioning funding liabilities has previously been approved by NRC and is consistent with generally accepted accounting

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.

principles (GAAP) that are used by various stakeholders to accurately reflect the economic reality of multiple liabilities – not just decommissioning funding assurance.

Annual review and readjustment of the guarantee amount is an appropriate and adequate condition on use of the net present value approach. 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 NPV method to valuing PCGs. In SRM-SECY-10-0084, the Commission explicitly recognized the NRC’s license transfer precedent approving the use of the net present value method. While the staff seems to be soliciting comments on conditioning the use of the NPV approach, its presentation is also infused with arguments that go to whether the NPV approach should be allowed at all. Indeed, the staff’s presentation on this subject asserts that, as the general matter, the NPV approach is prohibited under the current rules and a showing of “special circumstances” would need to be made in order to use the approach. As described in our March 8 letter, NEI disagrees with the staff’s assertion that the NPV approach is prohibited by the Commission’s current regulations. While it may be appropriate to condition use of the NPV approach, no exemption or other form of regulatory dispensation from an existing requirement would be necessary. To the contrary, conditioning the use of the NPV approach would be appropriately addressed in NRC guidance. From a substantive standpoint, NEI continues to believe that 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 is appropriate. This approach, which was used in some license transfer precedent, is 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 methods effectively equivalent.

Used fuel disposition discussions are not related to decommissioning funding assurance. Responsibility for the disposition of used fuel in the U.S. is assigned to the federal government under the Nuclear Waste Policy Act. Further, the costs associated with used fuel disposal and storage are addressed separately from the decommissioning funding assurance process. *See, e.g.*, 10 C.F.R. §§ 50.54(bb), 50.75(c) FN 1. Thus, it is unclear how management of used fuel is relevant to a discussion of decommissioning funding assurance for nuclear power reactors. Despite the fact that used fuel management is not germane to the issue at hand, it was discussed at several points during the workshop and was the sole focus of a presentation Ms. Sarah Hofmann of the Vermont Department of Public Service.

Monte Carlo analysis is unnecessary for the regulation of decommission funding assurance. As explained in Ms. Chen from GAO’s presentation, Monte Carlo simulations based on historical experiences assume that the future will resemble the past. We know this will not be the case moving forward with decommissioning as techniques for waste processing evolve and market conditions change. Defining the assumptions for such an analysis will consist of a purely academic exercise with little or no value to stakeholders. The present NRC regulatory framework has many conservatisms (including minimum funding levels, 2% real rate of return, biennial updates, etc.) that together (see e.g., 53 Fed. Reg. 24018, 24030 (June 27, 1988)) that adequate decommissioning funding will be available when needed. Indeed, the reasonableness

of these measures is supported by the performance of and quick recovery of licensee funds during the financial crisis of 2008.

Licensees of all types (rate-regulated and merchant companies) are meeting NRC requirements. The Duff and Phelps presentation and several comments by the NRC suggested that there is an issue raised simply because licensees have had declining deposits into their decommissioning funding assurance accounts in recent years. The graph used by Duff and Phelps (slide 8 of Mr. Kraus' presentation) shows deposits since 2005. This graph does not account for the various reasons why additional contributions may no longer be necessary at this time for particular funding approaches. For example, the significant number of license renewals, top-off funding for plants sold and/or moving to deregulated environments, as well as the application of SAFSTOR decommissioning analyses, are three factors, all consistent with the regulations, which may reduce or eliminate the need for further contributions to existing decommissioning funds. Further, the negative funding status cited on slide 13 of Mr. Kraus' presentation were calculated assuming no escalation of the current funds which is not consistent with how the NRC decommissioning funding assurance process works, and is therefore incorrect and misleading.

In closing, we would once again like to reiterate 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 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 one 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.

We appreciate the opportunity to provide comments on the workshop. Please do not hesitate to contact me if you have any questions.

Sincerely,



Leslie C. Kass

Enclosure

c: Mr. Chris Regan, U.S. Nuclear Regulatory Commission