



NUCLEAR ENERGY INSTITUTE

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SENIOR VICE PRESIDENT  
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November 4, 2009

The Honorable Gregory B. Jaczko  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, DC 2055-001

Dear Chairman Jaczko:

On October 6, 2009, the staff provided the Commission with an update on industry decommissioning funding assurance status in SECY-09-1046. The stated purpose of the SECY paper was to summarize the staff's findings from the biennial decommissioning funding review for the period ending December 31, 2008. The SECY paper paints an incomplete picture of the current state of decommissioning funding assurance and provides only a portion of the information that should be shared with the Commission and the public to ensure both an accurate representation and transparent process.

Considerable progress has been made in addressing decommissioning funding issues that were identified at 27 plants during the most recent biennial reviews. At least 11 of those 27 plants now meet the NRC minimum funding levels due to market recovery, additional SAFSTOR analysis, and clarifications provided to the NRC staff. The decommissioning trust fund balances of 85% of all power reactor licensees are now at or above the NRC minimum formula amount less than a year from the end of the reporting period with no action on the part of the NRC. This fact deserves notice in the SECY. All licensees have cooperated fully with NRC staff and are working on final details of plans to address any funding issues for the remaining units as necessary.

The SECY paper refers to a public meeting held on August 20, 2009, to discuss the proposed changes to the regulatory guidance for decommissioning funding assurance (DG-1229). The SECY states that based on stakeholder feedback at the meeting, "no changes to the current regulatory approach were identified." This is not correct. Although the SECY paper acknowledges NEI's comment letter on DG-1229, there is no substantive discussion of the concerns outlined therein. NEI amply supported its positions with legal and technical analyses, and references to NRC precedent. These analyses support industry's positions that the time period to address funding issues should not be arbitrarily shortened and that requiring application of "future value" calculations to parent guarantees is an unjustified and unnecessary expense.

The Honorable Gregory B. Jaczko

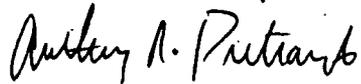
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Imposing new positions prior to formal dispositioning of comments on draft guidance is fundamentally unfair to licensees and is inconsistent with the NRC's Principles of Good Regulation.

We urge the Commission's attention to this matter.

Sincerely,



Anthony R. Pietrangelo

- c Commissioner Dale Klein, U.S. Nuclear Regulatory Commission
- Commissioner Kristine Svinicki, U.S. Nuclear Regulatory Commission
- Mr. William Borchardt, U.S. Nuclear Regulatory Commission
- Mr. Stephen G. Burns, U.S. Nuclear Regulatory Commission