

October 31, 2011

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary /RA/

SUBJECT: STAFF REQUIREMENTS – SECY-11-0088 – DENIAL OF
PETITION FOR RULEMAKING REQUESTING AMENDMENTS
TO 10 CFR PART 50 REGARDING DECOMMISSIONING AND
DECOMMISSIONING FUNDING (PRM-50-94)

The Commission has approved the staff's recommendation to deny the petition for rulemaking. The staff should incorporate the attached changes to the *Federal Register* notice and the letter to the petitioner and forward to the Secretary for publication and dispatch.

In order to provide stakeholders with a clear understanding of the requirements and options available for decommissioning, staff should codify the current definitions for SAFSTOR, ENTOMB and DECON in the future revision of 10 CFR Part 20.1003 (i.e., as a modification of the Definition section) and the conforming changes to 10 CFR 20 Subpart E, "Radiological Criteria for License Termination".

Attachment: Changes to the *Federal Register* notice and letter to the petitioner

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR

Changes to the *Federal Register* notice and letter to the petitioner

1. On page 4, 1st full paragraph, delete the last sentence (To address the ... wrongdoing.)
2. On page 4, 2nd full paragraph, revise line 1 to read 'The petitioner's first claim contains general assertions of violations but does not ask for enforcement-related action; therefore the NRC did not consider this under the 10 CFR 2.206 process. Further, the petitioner's claim was not considered within the allegation process because Regarding the first claim, the current NRC regulations'
3. On page 4, 2nd full paragraph, add the following sentence at the end: To address the petitioner's second claim, this petition has been forwarded to the NRC's Office of the Inspector General for a determination of whether the claim qualifies as an allegation of wrongdoing.
4. On page 4, delete the last paragraph which continues on page 5 (The Commission notes ... under 10 CFR 2.206.)
5. On page 7, last paragraph, revise line 1 to read ' ... one set of comments on'
6. On page 8 and 9, revise the NRC Response to Comment 1, to read as follows:

~~The NRC disagrees that increasing the frequency of reporting during financially turbulent times would merely produce only short term market information and fail to yield any useful or actionable information. Market conditions affect the licensee's trust fund balance; however, the reports provide much more information that is useful to the NRC. Each licensee's report provides the funding target, the amount accumulated for decommissioning, the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings and rates of other factors used in funding projections, an estimate of assured future collections, contracts that are relied upon to provide decommissioning funding, modifications to the methods the licensee uses to provide financial assurance, and material changes to trust agreements. The NRC uses the information contained in licensee's periodic financial reports to conduct a compliance check and to assess the ability of the licensee to continue to provide financial assurance in the future. Depending on the result of the NRC's assessment, the information may indeed be actionable and may indicate that additional oversight is appropriate for a particular licensee. For example, during the financially turbulent times of 2009, the NRC increased the frequency of reporting on decommissioning funding, and the information obtained was used as the basis for taking action at numerous reactor facilities that reported shortfalls in financial assurance.~~

The commenter's statement regarding the potential adverse effects of making precipitous changes in the investment strategy is a separate issue from the frequency of submitting a decommissioning fund status report. ~~Submitting a fund status report does not require changes in the investment strategy. The commenter provides no basis for the conclusion that a more frequent reporting requirement would cause any of the adverse effects listed.~~ Similarly, the commenter's description of the decommissioning cost estimates required as a power reactor approaches the cessation of operations and license termination are issues separate from the frequency of the fund status report. ~~The cost estimates are required to determine the amount of funds the licensee will need;~~

~~the report provides the information needed to assure the licensee's ability to provide the funds.~~

The NRC staff finds analysis of the market impacts on available funding to be useful and actionable. The commenter's statement, that the NRC can require more frequent reporting under its existing rules, is correct. Section V provides additional discussion of how the NRC can, and in many cases does require, more frequent reporting under its existing rules. For this reason, as described in Section V of this document, the NRC is denying the petitioner's request to increase the reporting frequency of the decommissioning fund status report.

7. On page 10, 2nd full paragraph, delete the first sentence (The commenter's other ... trust funds.)
8. On page 10, 2nd full paragraph, delete the last two sentences (Whether or not a ... decommissioning funds.)
9. On page 11, 1st full paragraph, add the following sentence at the end: The NRC also agrees that the agency's current requirements for the timeline to address funding shortfalls has continued to provide assurance of adequate funding.
10. On page 12, 1st full paragraph, revise line 1 to read ' ... agrees with the commenter that requests'
11. On page 12, last paragraph, delete the 1st four sentences (The NRC disagrees ... ENTOMB option.)
12. On page 13, revise line 2 from the top to read ' ... use conditions; allow decommissioning time periods beyond 60 years when necessary to protect public health and safety; consider the'
13. On page 14, 1st full paragraph, revise line 4 to read ' ... non-licensee. However, the NRC's regulations at 10 CFR 50.75(e) do not preclude such an arrangement. The NRC denies'
14. On page 15, 1st full paragraph, revise line 5 to read ' ... taxpayer expense. The NRC denies the request. In its'
15. On page 15, last paragraph, insert a new paragraph following this one which reads: Based on the rationale provided above, the NRC denies the request.
16. On page 18, 1st full paragraph, revise line 5 to read ' ... spent fuel. In addition, the Commission recently issued a rule which requires licensees to minimize contamination; requires that licensees survey outside for radiological hazards, including the subsurface soil and groundwater; and revises the financial assurance regulations. These requirements'
17. On page 19, revise line 5 from the top to read ' ... matter is resolved. The NRC's regulations in 10 CFR 20, "Standards for the Protection Against Radiation," provide general requirements for ensuring that radioactive waste is stored safely. With respect to'

18. On page 2 of the letter to the petitioner, 1st paragraph, revise line 13 to read ' ... of spent fuel. The Commission also recently issued a rule which requires that licensees minimize contamination, survey for on-site contamination, and which revises the decommissioning funding requirements. These requirements'
19. On page 2 of the letter to the petitioner, 3rd paragraph, revise lines 7 and 8 to read ' ... and IP3. Because these actions are not disallowed under the current NRC regulations and you did not request a specific enforcement action, this claim was not considered under the agency's 10 CFR 2.206 or allegation processes. and are discussed in the enclosed Federal Register notice. Second, your'