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72-0036 72-0042 72-1039

NL-12-2416

U. S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D. C. 20555-0001

Edwin I. Hatch Nuclear Plant – Units 1 and 2  
Joseph M. Farley Nuclear Plant – Units 1 and 2  
Vogtle Electric Generating Plant – Units 1 and 2  
Request for Exemption - 10 CFR 72.30(b), (c), and (d)

Ladies and Gentlemen:

Southern Nuclear Operating Company (SNC) is the licensed operator of the Edwin I. Hatch Nuclear Plant (Hatch), the Joseph M. Farley Nuclear Plant (Farley), and the Vogtle Electric Generating Plant (Vogtle). SNC currently operates an independent spent fuel storage installation (ISFSI) at Farley and Hatch under the general license provisions of 10 CFR Part 72, Subpart K, and is scheduled to begin ISFSI operations at Vogtle for Units 1 and 2 in 2013. In each case, the ISFSI for each SNC facility is co-located inside the owner controlled area (OCA) for the reactor plant licensed pursuant to Part 50 and operates in accordance with the general license provisions of Part 72, Subpart K.

On June 17, 2011, the Nuclear Regulatory Commission (NRC) published a Final Rule that included changes to the requirements in 10 CFR 72.30 applicable to operators of ISFSIs under the general license provisions of 10 CFR Part 72, Subpart K (76 FR 35573, Financial Assurance and Recordkeeping for Decommissioning). Specifically, 10 CFR 72.30(b) requires a site-specific cost study and decommissioning funding plan be provided for these ISFSIs, and 72.30(c) and (d) contain new reporting obligations. As reflected in the Final Rule, the fundamental purpose of these regulations is to provide adequate assurance that funds will be available to decommission the ISFSIs following permanent cessation of operations.

Because such assurance is already provided by SNC through compliance with 10 CFR Part 50 obligations and the owners' funding based on Part 50 requirements that include ISFSI decommissioning, SNC submits that the decommissioning funding plan and the reporting requirements are not necessary to provide reasonable assurance of adequate decommissioning funding for the ISFSIs operated at Hatch, Farley, and Vogtle. As such, pursuant to 10 CFR 72.7, SNC

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respectfully requests that the NRC grant an exemption to the requirements of 10 CFR 72.30(b), (c), and (d) for Hatch, Farley, and Vogtle. In support of this request, Enclosure 1 provides SNC's basis for the exemption request and Enclosure 2 contains a summary of the decommissioning cost estimates for management of spent fuel in accordance with 10 CFR 50.54(bb) and decommissioning the ISFSIs, as reflected in the current site-specific decommissioning cost estimates for Hatch, Farley, and Vogtle. SNC submits that an exemption in this case is appropriate and should be granted as the exemption will not endanger life or property or the common defense and security and is in the public interest (10 CFR 72.7).

Neither the Final Rule (76 FR 35573) nor 10 CFR 72.30 specifies a date for submittal of the cost study and funding plan required by 10 CFR 72.30(b), but the NRC has unofficially stated the submission deadline for general licensees is December 17, 2012, which is the effective date of the Final Rule. To the extent the NRC established the effective date to be the submission deadline, SNC requests a schedular exemption from this date given the pendency of SNC's request for an exemption from 10 CFR 72.30(b), (c), and (d). SNC requests an extension of ninety (90) days after the NRC's determination regarding SNC's request.

SNC also requests NRC exercise enforcement discretion pending completion of NRC review and determination regarding SNC's request for exemption to the requirements of 10 CFR 72.30(b), (c), and (d).

This letter contains no NRC commitments. If you have any questions, please contact Ken McElroy at (205) 992-7369.

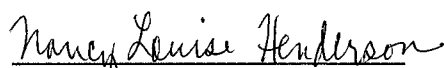
B. L. Ivey states he is Vice President Regulatory Affairs of Southern Nuclear Operating Company, is authorized to execute this oath on behalf of Southern Nuclear Operating Company and to the best of his knowledge and belief, the facts set forth in this letter are true.

Respectfully submitted,

  
B. L. "Pete" Ivey  
Vice President Regulatory Affairs

BLI/TWS/

Sworn to and subscribed before me this 17<sup>th</sup> day of December 2012.

  
Nancy Louise Henderson  
Notary Public

My commission expires: March 23, 2014

- Enclosures: 1. Basis for Exemption Request  
2. Estimated Cost to Decommissioning Independent Spent Fuel Storage Installations

cc: Southern Nuclear Operating Company  
Mr. S. E. Kuczynski, Chairman, President & CEO  
Mr. D. G. Bost, Executive Vice President & Chief Nuclear Officer  
Mr. T. A. Lynch, Vice President – Farley  
Mr. D. R. Madison, Vice President – Hatch  
Mr. T. E. Tynan, Vice President - Vogtle  
Mr. B. L. Ivey, Vice President – Regulatory Affairs  
Mr. B. J. Adams, Vice President – Fleet Operations  
RType: CFA04.054; CHA02.004; CVC7000

U. S. Nuclear Regulatory Commission  
Mr. V. M. McCree, Regional Administrator  
Ms. E. A. Brown, NRR Project Manager – Farley  
Mr. R. E. Martin, NRR Project Manager – Hatch and Vogtle  
Mr. E. L. Crowe, Senior Resident Inspector – Farley  
Mr. E. D. Morris, Senior Resident Inspector – Hatch  
Mr. L. M. Cain, Senior Resident Inspector – Vogtle

**Edwin I. Hatch Nuclear Plant – Units 1 and 2  
Joseph M. Farley Nuclear Plant – Units 1 and 2  
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Request for Exemption - 10 CFR 72.30(b), (c), and (d)**

**Enclosure 1**

**Basis for Exemption Request**

**Enclosure 1 to NL-12-2416  
Basis for Exemption Request**

**A. Background**

On January 22, 2008, the Nuclear Regulatory Commission (NRC) published a notice of proposed rulemaking that included changes to 10 CFR 72.30 that would require operators of ISFSIs under a specific license (issued under 10 CFR 72, Subpart C), to provide a decommissioning funding plan and detailed cost estimate for decommissioning the ISFSI (73 FR 3812). The relevant proposed requirements were contained in 10 CFR 72.30(b), (c) and (d). The intent stated in the summary of the proposed rule included:

- improve decommissioning planning, and thereby reduce the likelihood that any current operating facility will become a legacy site;
- require licensees to conduct their operations to minimize the introduction of residual radiation into the site, including subsurface soil and groundwater;
- require licensees to survey certain quantities of residual radioactivity, including in subsurface areas;
- keep records of surveys of subsurface residual radioactivity identified at the site with records important to decommissioning; and
- require decommissioning power reactor licensees to report additional information on the costs of decommissioning and spent fuel management.

In the proposed rule, the new requirements in 10 CFR 72.30(b), (c) and (d) were not applicable to operators of ISFSIs under the general license provisions of 10 CFR Part 72, Subpart K, but were extended to general licensees in the Final Rule without an opportunity to comment on the change (76 FR 35573, dated June 17, 2011). As a result, Part 50 licensees that operate ISFSIs in accordance with the general license provisions of Part 72, Subpart K are now subject to the following requirements:

- (b) Each holder of, or applicant for, a license under this part must submit for NRC review and approval a decommissioning funding plan that must contain:*
- (1) Information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI or MRS.*
  - (2) A detailed cost estimate for decommissioning, in an amount reflecting:*
    - (i) The cost of an independent contractor to perform all decommissioning activities;*
    - (ii) An adequate contingency factor; and*
    - (iii) The cost of meeting the § 20.1402 of this chapter criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of § 20.1403 of this chapter, the cost estimate may be based on meeting the § 20.1403 criteria.*
  - (3) Identification of and justification for using the key assumptions contained in the DCE.*

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**Basis for Exemption Request**

- (4) A description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility.*
  - (5) The volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination.*
  - (6) A certification that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning.*
- (c) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan must update the information submitted with the original or prior approved plan and must specifically consider the effect of the following events on decommissioning costs:*
- (1) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material.*
  - (2) Facility modifications.*
  - (3) Changes in authorized possession limits.*
  - (4) Actual remediation costs that exceed the previous cost estimate.*
- (d) If, in surveys made under 10 CFR 20.1501(a), residual radioactivity in soils or groundwater is detected at levels that would require such radioactivity to be reduced to a level permitting release of the property for unrestricted use under the decommissioning requirements in Part 20 of this chapter, the licensee must submit a new or revised decommissioning funding plan within one year of when the survey is completed.*

Notably, the requirements of 10 CFR 72.30(g), which establish the minimum funding requirements for ISFSI decommissioning, were not made applicable to general licensees issued to Part 50 licensees because of the applicability of the decommissioning funding requirements of 10 CFR 50.75 to Part 50 licensees.

**B. Basis for Exemption**

The site-specific study and decommissioning funding plan required by 10 CFR 72.30(b) and the reporting requirements in 10 CFR 72.30(c) and (d) are not necessary to provide reasonable assurance of decommissioning funding for ISFSIs operated at Hatch, Farley, and Vogtle because such assurance is already provided by SNC's compliance with 10 CFR Part 50 obligations and the owners' collection of decommissioning funds for management of spent fuel and decommissioning the ISFSIs based on site-specific estimates prepared for removal of the Part 50 facility and license termination in accordance with 10 CFR 50.82 at each site.

## **Enclosure 1 to NL-12-2416 Basis for Exemption Request**

The requirements of 10 CFR 72.30(b) include submittal of a separate decommissioning funding plan for ISFSIs located at Hatch, Farley, and Vogtle operated in accordance with the general license provisions of Part 72, Subpart K. As reflected in the regulations, the fundamental purpose of this requirement and the reporting obligations in 10 CFR 72.30(c) and (d) is to assure that adequate funds are available to decommission the ISFSIs. The basis for SNC's exemption request is that compliance with these requirements is not necessary to achieve their purpose because adequate assurance of decommissioning funding for the ISFSIs at Hatch, Farley, and Vogtle is provided through compliance with Part 50 obligations, which for SNC-operated facilities includes collection of funds for management of spent fuel following cessation of operations and decommissioning of the ISFSI at each site.

SNC currently operates ISFSIs at Farley and Hatch under the general license provisions of 10 CFR Part 72, Subpart K, and is scheduled to begin ISFSI operations at Vogtle for Units 1 and 2 in 2013. In each case, the ISFSI for each SNC facility is co-located inside the owner controlled area (OCA) for the reactor plant licensed pursuant to Part 50 and operates in accordance with the general license provisions of Part 72, Subpart K. As such, the ISFSIs are included in decommissioning funding for termination of the Part 50 specific license for each SNC-operated facility as required by 10 CFR 50.75(b) and the amount provided for decommissioning is updated annually as required by 10 CFR 50.75(b)(2). SNC provides the status of its decommissioning funding on behalf of each licensed owner of Hatch, Farley, and Vogtle in accordance with the requirements of 10 CFR 50.75(f)(2) on a biennial basis with the next scheduled report to be submitted by March 31, 2013. The requirements of 10 CFR 50.75, Reporting and Recordkeeping for Decommissioning Planning, are the applicable Part 50 requirements for showing assurance of funds for decommissioning of a Part 50 facility, which includes the ISFSI. Accordingly, compliance with the requirements of 10 CFR 72.30(b), (c), and (d) is not necessary to achieve the intent of the regulation and will not provide any additional protection for the public health and safety beyond that provided via SNC implementation of the existing requirements of 10 CFR 50.75.

Adequate assurance of decommissioning funds for the ISFSIs is also demonstrated through the site-specific estimates that SNC provides the owners of Hatch, Farley, and Vogtle. These estimates are provided on regular intervals (three years for Hatch and Vogtle, five years for Farley) to support periodic review of the cost-of-service for the plants' owners and serve as the basis for amounts collected to fund decommissioning. These site-specific estimates are also provided to the appropriate state public service commissions or rate-setting authority, as applicable. The estimates are derived from the site-specific reports prepared by TLG Services, Inc. for Hatch, Farley, and Vogtle and include the estimated cost for management of the spent fuel in accordance with 10 CFR 50.54(bb), and decommissioning the ISFSI following removal of the spent fuel by the Department of Energy (DOE). The estimated costs are adjusted periodically to reflect the current assumptions such as cost of energy, labor, burial cost, projected capacity, and schedule for removal of fuel from the site. For a summary of the site-specific estimates for management of spent fuel and decommissioning the ISFSIs, see Enclosure 2. Incorporation of the ISFSI into the scope of the decommissioning cost estimates for Hatch, Farley, and Vogtle, and use of these decommissioning cost

**Enclosure 1 to NL-12-2416**  
**Basis for Exemption Request**

estimates in conjunction with cost-of-service ratemaking, provides assurance that adequate funding will be available and achieves the same purpose as would be under 10 CFR 72.30(b), (c), and (d).

10 CFR 72.30(c) requires resubmittal of the decommissioning funding plan at the time of license renewal for the ISFSI and at intervals not to exceed 3 years with adjustments as necessary to account for changes in the cost and the extent of contamination. 10 CFR 72.30(d) requires submittal of an updated decommissioning funding plan upon identification of residual radioactivity during performance of surveys required by 10 CFR 20.1501. Both of these requirements are based on the initial submittal requirement in 10 CFR 72.30(b) and presumably rely on 72.30(b) for effect. In the same manner described above, the intent of the requirements to submit updated plans in 10 CFR 72.30(c) and (d) is currently met by the actions taken by SNC to include the ISFSIs in the decommissioning planning in accordance with 10 CFR 50.75 and by the owners of Hatch, Farley, and Vogtle to collect decommissioning funds. Accordingly, SNC submits that an exemption from these requirements is appropriate.

Additionally, the NRC has recognized that requirements in Part 72 should not necessarily be applied to Part 72 general licensees, because general licensees are governed by Part 50. The Statement of Considerations for the Final Rule (76 FR 35551) states the change to 10 CFR 72.30(g) does not apply to Part 72 general licensees, explaining that “. . . a general licensee can only be subject to requirements that a Part 50 licensee is subject to.” SNC believes the requirement in 10 CFR 72.30(d), as with that contained in 10 CFR 72.30(g), does not have a parallel requirement in Part 50, and Part 50 already adequately protects life, property, and common defense and security for the ISFSIs operated at Hatch, Farley, and Vogtle. SNC submits this as another basis for the exemption.

**C. Summary and Conclusion**

SNC submits that the decommissioning funding plan and the reporting requirements in 10 CFR 72.30(b), (c), and (d) are not necessary to provide reasonable assurance of adequate decommissioning funding for the ISFSIs operated at Hatch, Farley, and Vogtle because such assurance is already provided by SNC through compliance with 10 CFR Part 50 obligations and by owners' decommissioning funding. As such, pursuant to 10 CFR 72.7, SNC respectfully requests that the NRC grant an exemption to the requirements of 10 CFR 72.30(b), (c), and (d) for Hatch, Farley, and Vogtle.



**Edwin I. Hatch Nuclear Plant – Units 1 and 2  
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**Enclosure 2**

**Estimated Cost to Decommissioning  
Independent Spent Fuel Storage Installations**

**Enclosure 2 to NL-12-2416  
 Estimated Cost to Decommissioning Independent  
 Spent Fuel Storage Installations**

The following table provides a summary of the most recent site-specific cost estimates prepared for Hatch, Farley, and Vogtle for management of spent fuel following cessation of operation as required by 10 CFR 50.54(bb) and decommissioning the ISFSI operated in accordance with the general license provisions of Part 72, Subpart K. These cost estimates are contained in the site-specific decommissioning funding reports prepared TLG Services, Inc. These site specific estimates are also provided to the appropriate state public service commissions or rate-setting authority, as applicable. The ISFSI specific amounts include the cost for management of spent fuel and decommissioning the ISFSI to support termination of the Part 50 specific license in accordance with the requirements of 10 CFR 50.82. The estimated cost is adjusted periodically to reflect the current assumptions such as cost of energy, labor, burial cost, projected capacity, schedule for removal of fuel from the site, etc. for use in establishing cost of electricity by the owners of Hatch, Farley, and Vogtle, for recovery through rates established by the applicable rate-setting authority.

<b>Estimated Cost to Manage Spent Fuel and Decommission Independent Spent Fuel Storage Installations</b>			
<b>Plant</b>	<b>Unit 1</b>	<b>Unit 2</b>	<b>Total</b>
<b>Hatch</b> (2012 dollars)	\$ 73,328,000	\$ 189,231,000	\$ 262,559,000
<b>Farley</b> (2008 dollars)	\$ 62,599,000	\$ 135,775,000	\$ 198,374,000
<b>Vogtle</b> (2012 dollars)	\$ 85,394,000	\$ 167,750,000	\$ 253,144,000

The applicable rate-setting authority for Hatch and Vogtle require that the cost study be updated on a three-year interval. The rate-setting authority for Farley requires the decommissioning cost estimate to be updated on five-year intervals. An updated decommissioning cost study will be prepared for Farley in 2013.