

December 31, 2013

Mr. B.L. Ivey
Vice President, Regulatory Affairs
Southern Nuclear Operating Company
40 Inverness Center Parkway
Birmingham, AL 35242

SUBJECT: DENIAL OF REQUEST FOR EXEMPTION FROM 10 CFR 72.30
REQUIREMENTS FOR SOUTHERN NUCLEAR OPERATING COMPANY—
(TAC NOS. L24711, L24712, AND L24713)

Dear Mr. Ivey:

The staff of the U.S. Nuclear Regulatory Commission (NRC) has reviewed your exemption request, dated December 17, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12354A300). On behalf of Edwin I. Hatch Nuclear Plant (Hatch), Joseph M. Farley Nuclear Plant (Farley), and Vogtle Electric Generating Plant (Vogtle) (together, "the plants"), you requested an exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 72.30(b), (c), and (d). In support of the requested exemption, you state that after the plants permanently cease reactor operations, there is adequate assurance that funds will be available to decommission their onsite independent spent fuel storage installations (ISFSIs) because Southern Nuclear Operating Company (SNC) is in compliance with 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," funding requirements "that include ISFSI decommissioning."

The NRC staff is denying the requested exemption for the reasons stated below.

As discussed below, the 10 CFR Part 50 provisions cited by SNC in its argument do not pertain to providing financial assurance for the costs of decommissioning ISFSIs, and thus do not support your conclusion that SNC has already provided reasonable assurance of adequate decommissioning funding for the ISFSIs operated at Hatch, Farley, and Vogtle.

SNC states that the 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning," requirements are the applicable requirements for showing assurance of funds for decommissioning of a Part 50 facility, "which includes the ISFSI." SNC similarly states that ISFSIs "are included in decommissioning funding" for terminating the SNC Part 50 specific licenses "as required by 10 CFR 50.75(b)," and that the amount provided for decommissioning "is updated annually as required by 10 CFR 50.75(b)(2)." SNC also explains that it includes the estimated cost for management of the spent fuel "in accordance with 10 CFR 50.54(bb)."

But SNC does not address the 10 CFR 50.75(c) provisions, which by their terms are applicable only to providing reasonable assurance of funds for decommissioning reactors. Nor do you show that such provisions are equivalent to the decommissioning funding plan and reporting requirements in 10 CFR 72.30(b), (c), and (d) from which SNC seeks to be exempted. In this regard, Note 1 to 10 CFR 50.75(c) states, in relevant part:

Amounts are based on activities related to the definition of "Decommission" in § 50.2 of this part and do not include the cost of removal and disposal of spent fuel....

When 10 CFR 50.75 (and the above Note 1) were issued in 1988, the NRC also established a definition of "Decommission" and stated that decommissioning activities "do not include the removal and disposal of spent fuel which is considered to be an operational activity" ("General Requirements for Decommissioning Nuclear Facilities," 53 FR 24018, at 24019 (June 27, 1988)). This statement was (and is) consistent with 10 CFR 50.54(bb), which since 1984 has set forth a license condition that is part of every Part 50 power reactor operating license. This license condition includes a provision regarding how the licensee "intends to manage and provide funding for the management of all irradiated fuel at the reactor" after the reactor has permanently ceased to operate. But neither 10 CFR 50.54(bb), nor its accompanying 1984 statement of considerations, says anything about financial assurance for decommissioning ISFSIs. In response to comments on the proposed rule to establish 10 CFR 50.54(bb), the NRC refused to even link the cost of managing irradiated fuel with the decommissioning of reactors. The Commission stated in this regard that it considered the decommissioning process to be "a set of actions separate from those discussed in 10 CFR 50.54(bb)" ("Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licenses," 49 FR 34688, at 34692 (Aug. 31, 1984)).

Regulations in 10 CFR 50.2, "Definitions," now define "Decommission" to mean:

to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

- (1) Release of the property for unrestricted use and termination of the license; or
- (2) Release of the property under restricted conditions and termination of the license.

The term "license" to which these regulations pertain is defined in 10 CFR 50.2:

License means a license, including a construction permit or operating license under this part, an early site permit, combined license or manufacturing license under part 52 of this chapter, or a renewed license issued by the Commission under this part, part 52, or part 54 of this chapter.

As such, there is no reference in 10 CFR 50.75, direct or indirect, to ISFSI decommissioning costs associated with a general license issued under 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste," and there is no 10 CFR Part 50 requirement that includes ISFSI decommissioning. Consistent with the above discussion, the NRC staff's position is that in order to satisfy 10 CFR 72.30, "Financial Assurance and Recordkeeping for Decommissioning," the funds a licensee sets aside to cover ISFSI decommissioning costs cannot be the same funds the licensee will use to cover Part 50 reactor decommissioning costs, and that the minimum dollar amounts in 10 CFR 50.75(c) do not cover ISFSI decommissioning costs.

The funds necessary to satisfy the Part 50 reactor decommissioning financial assurance requirements are not to include costs for ISFSI decommissioning. A licensee can hold ISFSI decommissioning and reactor decommissioning funds in the same financial instrument, but the licensee must be able to show that ISFSI decommissioning and reactor decommissioning funds are separately tracked. The NRC has established a regulatory framework for financial assurance and recordkeeping for decommissioning for ISFSIs in 10 CFR Part 72 that the 10 CFR Part 50 requirements do not address.

In addition, 10 CFR 72.30 provides for protection of public health and safety by assuring that adequate funds are available to reduce residual radioactivity to levels that permit release of the ISFSI from NRC oversight. Exemption from these requirements would negate the NRC's regulatory efforts in the interest of public health and safety by bypassing actions related to residual radioactivity.

SNC states that it provides the status of its decommissioning funding for the Hatch, Farley, and Vogtle plants "in accordance with the requirements of 10 CFR 50.75(f)(2) on a biennial basis." But SNC again fails to show how this provision is relevant to providing financial assurance for the costs of decommissioning its ISFSIs.

Your submittal, as required by 10 CFR 72.30, is requested by no later than ninety (90) days after the date of this letter. Your request for enforcement discretion will be evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at (<http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>).

In accordance with 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding," of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions regarding this matter, please contact me at 301-287-0673.

Sincerely,

/RA/

Mark Lombard, Director
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

Docket Nos.: 50-321 50-348 50-424
50-366 50-364 50-425
72-0036 72-0042 72-1039

TAC Nos.: L24711, L24712, L24713

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