

**POLICY ISSUE**  
**(Notation Vote)**

January 15, 2015

SECY-15-0005

FOR: The Commissioners

FROM: Mark A. Satorius  
Executive Director for Operations

SUBJECT: RECOMMENDATION TO SUNSET THE DECOMMISSIONING TRUST  
FUND SPOT-CHECK PROGRAM

PURPOSE:

The purpose of this paper is to provide an update on the status of the decommissioning trust fund spot-check program and to recommend ending the spot-check program in its current format. This paper does not address any new commitments or resource implications.

BACKGROUND:

On February 6, 2006, the Office of the Inspector General (OIG) issued the audit report (OIG-06-A-07), "Follow-up Audit of the Nuclear Regulatory Commission's Decommissioning Fund Program" (Agencywide Document Access and Management System (ADAMS) Accession No. ML060370376). The audit identified, among other items, opportunities for improvement in the U.S. Nuclear Regulatory Commission's (NRC) decommissioning funding assurance program for operating power reactors. The OIG's audit concluded that rather than relying solely upon licensees' reports of trust fund balance information, the NRC should require that the trustees<sup>1</sup> report trust fund balances directly to the NRC for verification.

In response, the staff issued SECY-06-0655, "Office of the Inspector General Recommendations on Decommissioning Funding Assurance," dated March 23, 2006 (ADAMS Accession No. ML060590524). The staff disagreed with the OIG's above noted

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<sup>1</sup>

According to 10 CFR 50.75(e)(1), investments into an external decommissioning trust fund must be managed by a third party, outside the control of the licensee. A trustee is the holder of the trust fund with a fiduciary responsibility to the beneficiary of the fund.

recommendation for two reasons. First, the staff indicated that the requirements of 10 CFR 50.9 ensure that licensees report complete and accurate biennial Decommissioning Funding Status (DFS) reports<sup>2</sup>. Second, the staff does not believe that receiving trust fund information directly from trustees would improve the reliability of the reports. The staff stated, “[t]he assumption that licensees could file false information with the NRC could equally apply to the trustees.” On May 17, 2006, in the staff requirements memorandum (SRM) to SECY-06-0065 (ADAMS Accession No. ML061370418), the Commission agreed with the staff’s recommendation. Nonetheless, the Commission directed that the staff “provide the Commission a more detailed discussion of decommissioning trust fund balance and investment oversight activities” conducted by other Federal and State organizations, and recommend further Commission action, as appropriate.

In response, on November 7, 2007, the staff issued SECY-07-0197, “Reactor Decommissioning Trust Fund Oversight by Other Agencies and Recommendations Regarding Further Action.” The staff found that public utility commissions and the Federal Energy Regulatory Commission rely on trust fund balance information provided by the licensees. However, to assuage continuing OIG concerns, the staff presented the Commission with several options. The staff recommended Option 2, which stated that the:

NRC staff periodically spot-check, at the licensee's offices, original statements and other related original documents sent to a licensee from its trustee that disclose the trust fund balance. With this option, the OIG’s concern that a licensee is providing false information in its biennial reports to the NRC should be significantly reduced. If discrepancies in the biennial reports filed with the NRC are discovered, the staff could then recommend further revisions to the decommissioning funding assurance program depending upon the nature and seriousness of the discrepancies.

In its SRM dated January 9, 2008, the Commission approved the staff’s recommendation to perform periodic spot-checks.

#### DISCUSSION:

When performing spot-checks, the staff travels to corporate offices and meets directly with licensee staff, reviews trust fund balance statements, and compares them with the values provided in the most recent biennial DFS report. Because each nuclear power plant can have several owners, the staff performs spot-checks on each owner’s respective decommissioning trust fund. The enclosure to this paper lists all of the spot-checks performed by the staff to date.

The staff performed the first spot-check on April 23, 2008, at the Constellation Energy Group headquarters in Baltimore, Maryland, for Calvert Cliffs, Units 1 and 2; Nine Mile Point, Units 1 and 2; and R.E. Ginna. Subsequently, the staff performed spot-checks for nearly all owners of nuclear power reactors licensed by the NRC. To date, the staff has not identified any significant misreporting of fund balances. During one spot-check, the staff found that the licensee’s DFS report provided a trust fund value below the actual amount in the trust fund. Nevertheless, the licensee met the financial assurance requirements using either value. The NRC issued a minor

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<sup>2</sup> 52 FR 49372, December 31, 1987.

violation to the licensee for failure to accurately report the correct trust fund value at the end of the calendar year preceding the date of the report<sup>3</sup>.

Currently, the NRC staff generally performs spot-checks for six plants on a random basis during the fiscal year. The staff expends approximately 0.3 full-time equivalent (FTE) staff and \$12,000 in travel funds to support this work per year. Due to the ongoing cost of performing spot-checks, the minimal safety benefit realized to date, and the lack of a historical record of misreporting, the staff recommends discontinuing periodic spot-checks of licensees. Instead, the staff recommends implementing the program only on an as-needed basis when there is sufficient justification. For example, if a licensee has a significant decline in trust fund balances between reporting cycles, the staff may have a reasonable basis to perform a spot-check of the licensee's decommissioning trust funds to ensure their continued viability.

#### RECOMMENDATION:

The staff recommends sunsetting the spot-check program in its current form and performing spot-checks only on an as-needed basis. Because the staff has not identified any significant DFS report discrepancies since the inception of the program in 2008, continuing the program does not appear to be an efficient or effective use of agency resources. However, the staff would retain the spot-check program should there be just cause to audit a particular licensee. The staff notes that sunsetting the spot-check program would not comply with the OIG recommendations provided in 2006. However, due to the lack of any significant findings of misreporting, the staff believes continuing the program has minimal safety benefit and the current decommissioning trust fund reporting process and regulatory structure provide enough assurance that licensees do not misreport decommissioning trust fund balances.

#### RESOURCES:

Travel costs for performing a spot-check amount to less than \$2,000 per visit based on past travel costs and less than 0.1 FTE staff for preparing for and carrying out a spot-check. These costs are currently accounted for within the budgeted resources for fiscal year 2015.

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<sup>3</sup> Crystal River 3 – Minor Violation Regarding Progress Energy Florida's 2009 Decommissioning Funding Status Report; Docket No. 50-302 (ADAMS Accession No. ML110610635).

The Commissioners

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COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer does not have any objection. Also, the NRC staff has informed the OIG of its recommendation.

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Mark A. Satorius  
Executive Director  
for Operations

Enclosure:  
Spot-Checks Spreadsheet

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer does not have any objection. Also, the NRC staff has informed the OIG of its recommendation.

*/RA/*

Mark A. Satorius  
Executive Director  
for Operations

Enclosure:  
Spot-Checks Spreadsheet

ADAMS Accession No: ML14210A554; Pkg: ML14210A549 ; \* - Concurrence via e-mail

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