

April 20, 2015

Mr. Daniel B. Shrum
Senior Vice-President, Regulatory Affairs
EnergySolutions
423 West 300 South, Suite 200
Salt Lake City, UT 84101

Dear Mr. Shrum:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of December 1, 2014, urging the NRC to issue a statement in favor of accelerating decommissioning activities at operating sites. I note that you, or your company, have previously raised this and related topics. A great deal of consideration has been given to your prior proposals to allow operating power reactor sites to use decommissioning funding to dispose of major radioactive components (MRCs) before permanent cessation of operations. The agency's review of your latest proposal indicates that the NRC's existing policy and processes remain sound, and there does not appear to be a basis to change our previous position on this matter. Therefore, we do not intend to take action on your proposal at this time.

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.82, "Termination of License," does not permit the use of decommissioning trust funds for purposes other than decommissioning activities. As defined in 10 CFR 50.2, "Definitions," "*decommission*" "means 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." If an MRC must be replaced and disposed of during operations, this activity is not a decommissioning expense that can be funded by dedicated decommissioning trust funds required by regulation. Rather, it is an operating expense.

By letter dated May 29, 2007, EnergySolutions submitted a petition for rulemaking to amend 10 CFR 50.82. The petition, docketed as PRM-50-88, requested that the NRC establish a process to allow licensees to use dedicated decommissioning trust funds to dispose of MRCs before the permanent cessation of operations. The NRC ultimately denied this petition because the arguments made were not sufficiently persuasive to support the proposed rulemaking. The Commission stated that its policy to not allow the use of decommissioning trust funds for the early disposal of MRCs during operations was prudent and necessary generically to preserve and protect such funds.

Additionally, a 1996 rulemaking considered amending 10 CFR 50.82. The NRC addressed NEI's request to use dedicated decommissioning trust funds for the disposal of structures and equipment no longer being used before decommissioning. The NRC concluded that trust fund withdrawals for such disposal were not warranted and that those "activities [were] more appropriately considered operating activities and should be financed in that way" (61 FR 39293; July 29, 1996).

Your December 1, 2014, letter asks the Commission to effectively override the above decisions and direct the NRC staff to grant favorable exemptions to licensees seeking to use decommissioning funds to dispose of MRCs during operations. You cite a U.S. Department of Treasury memorandum (No. 200931007) in support of your position. You state that the Treasury Department concludes that the expression “nuclear decommissioning costs” has been broadly defined.

The referenced Treasury memorandum concerns the tax treatment of certain expenses of owning and operating a nuclear power plant and does not endorse the use of NRC-mandated decommissioning trust funds to pay for disposal or removal of major radioactive components. It is, therefore, not in conflict with NRC regulations.

Your December 1, 2014, letter also references SECY-13-0066, “Staff Findings on the Table of Minimum Amounts Required To Demonstrate Decommissioning Funding Assurance,” and concludes that a licensee should be granted an exemption to use decommissioning trust funds so long as the licensee continues to satisfy the minimum requirements of 10 CFR 50.75, “Reporting and Recordkeeping for Decommissioning Planning.” The Table of Minimum Amounts provides the minimum amount of funds required to be set aside by a licensee for dedicated decommissioning and, as implied, does not necessarily represent the full cost for radiological decommissioning activities. Eventually, a site-specific cost estimate replaces the calculated minimum amount of funds expected to be set aside for dedicated decommissioning derived from the Table of Minimum Amounts. As required by 10 CFR 50.75, a site-specific cost estimate shall be provided at, or about, five years before the expected time of permanent cessation of operations or within two years following an unexpected shutdown. The site-specific cost estimate represents a better calculation of dedicated radiological decommissioning expenses. Historically, and as expected, all site-specific cost estimates submitted to the NRC have been greater than the Table of Minimum Amounts.

The NRC staff used a Pacific Northwest National Laboratory study, “Assessment of the Adequacy of the 10 CFR 50.75 Minimum Decommissioning Fund Formula,” dated November 2011 (Agencywide Documents Access and Management System Accession No. ML13063A190), as input to inform SECY-13-0066. That study determined the adequacy of the Table of Minimum Amounts and assumed the cost of a one-time disposal for each MRC. Thus, the use of dedicated decommissioning funds to dispose of additional MRCs while the reactor facility is in operation would undermine the minimum amount calculated under the Table of Minimum Amounts and jeopardize the amount of funding needed to successfully decommission at the end of the operating life of the reactor facility.

Finally, 10 CFR 50.12, “Specific Exemptions,” contains the established process for filing exemption requests for trust fund withdrawals. Each exemption request is evaluated on a case-by-case basis, and in the case of trust fund withdrawals for disposal of MRCs, would be granted only “in extraordinary circumstances” (73 FR 62222; October 20, 2008). If the NRC changed its current policy to accommodate the request by EnergySolutions, the proposal would still require a careful case-by-case review to determine whether to permit a particular trust fund withdrawal. Thus, the adoption of your proposal would not provide a processing advantage.

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Although the agency may disagree with your views on this matter, I appreciate and respect your position and interest in communicating with the Commission on this matter.

Sincerely,

/RA/

Stephen G. Burns