

March 16, 2016

MEMORANDUM TO: Kevin Hsueh, Chief
Licensing Processes Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

FROM: Joseph J. Holonich, Senior Project Manager */RA/*
Licensing Processes Branch
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Office of Nuclear Reactor Regulation

SUBJECT: SUMMARY OF JANUARY 7, 2016, MEETING WITH THE NUCLEAR
ENERGY INSTITUTE TO DISCUSS ITS PROPOSAL TO DEVELOP
INDUSTRY GUIDANCE FOR DECOMMISSIONING FUNDING

On January 7, 2016, U.S. Nuclear Regulatory Commission (NRC) staff met with representatives from the Nuclear Energy Institute (NEI). The purpose of the meeting was to discuss the draft guidance document - NEI 15-06, "Use of Nuclear Decommissioning Trust Fund," submitted to the NRC staff on November 30, 2015, for review and potential endorsement (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML15335A182 and ML15335A187). The ADAMS Accession Nos. for all the information related to the meeting including the NEI submittal, presentations, and attendees list can be found in the ADAMS Package Accession No. ML15344A107.

In its opening remarks, the NRC staff stated that there is considerable stakeholder interest in the area of decommissioning, including decommissioning funding. Continuing, the NRC staff noted that the appropriate use of the decommissioning trust fund, specifically: 1) the commingling of funds in the decommissioning trust, 2) funds to support decommissioning planning, and 3) what constitutes a legitimate decommissioning activity are topics under a proposed rulemaking published for public comment. Finally, the NRC staff emphasized it would not discuss any site-specific issues related to allowable expenditures from decommissioning trust funds at the meeting since these are the subject of pending litigation and are currently under review and consideration by the Commission.

The NEI representative's opening remarks were incorporated as a slide in its presentation. Copies of the presentation can be found in the ADAMS package previously referenced.

During NEI's presentation and subsequent dialogue session, the NRC staff provided comments for NEI's consideration based on the NRC staff's preliminary review of the NEI submittal. A copy of those comments is enclosed to these minutes.

Further, the NRC staff stated that once a decision was received on the matters under Commission consideration and a more detailed review of NEI's submission is completed by the staff additional comments may be forthcoming. The NRC staff also stated that the formal

process for endorsing any NEI guidance would be in writing, most likely through the revision and issuance of a regulatory product such as a regulatory guide. In this process, stakeholders can participate when the draft guidance is issued for public comment.

When the NRC/NEI interactions were completed, the NRC staff opened the meeting to stakeholder participation. Comments received from stakeholders included:

- 1) The State of Vermont stated it appreciated that there was a public-comment process and recognized that the NRC staff should not be in front of the Commission. The state also requested that it be provided copies of documents on this topic. The NRC staff agreed to provide copies. The State of Vermont also said that it appreciated that there was a public input process for endorsing the NEI guidance.
- 2) The State of New York, Division of Public Service, identified some clarifications that NEI agreed would make the guidance more clear.
- 3) The State of Massachusetts stated it may have comments but was waiting until the Commission had completed its action.
- 4) The State of New York, Attorney General, asked if a precedent set in an earlier review could be applied to a different plant 20 years later. The NRC staff explained that each plant licensing action is reviewed in the context of that specific submission. However, the NRC staff noted that it did consider previous reviews in making its determination but those were used to inform the current review not serve as a basis to make a decision.

A second question asked why NEI and the NRC staff were in the guidance-development process instead of an Administrative Procedures Act process like rulemaking. The NRC staff answered that there were currently legitimate questions about what constituted an acceptable decommissioning trust fund. The NEI had taken an initiative to address these questions because a rulemaking is a more extended process, having guidance provides clarity now.

There were no actions from the meeting.

Project No. 689

Enclosure: As stated

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ADAMS Accession Nos.: Package (ML15344A107); Summary (ML16005A002); Notice (ML15344A105)

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NAME	JHolonich	DHarrison	ABowers	KHsueh	JHolonich
DATE	02/24/2016	02/23/2016	03/7/2016	03/14/2016	03/16/2016

- Comment – Definitions (pages 2-3)
 - General comment: Ensure that the definitions that restate or paraphrase NRC regulations or guidance do not unintentionally change the meaning of the regulation or guidance.
- Comment – Decommissioning Funding Assurance (pages 2, 5)
 - Definition and discussion of decommissioning funding assurance only includes the requirements in 10 CFR 50.75(e)(1). However, 50.75(e)(1) pertains to operating reactors not yet in decommissioning.
 - **Decommissioning funding assurance for reactors in decommissioning is governed by 10 CFR 50.82(a)(8). Consider adding 10 CFR 50.82(a)(8) for clarification.**
- Comment – Planning expenses for decommissioning (page 3)
 - Defines this term in part as follows: “expenses authorized up to 3% of the generically prescribed decommissioning funds to be available to the licensee for planning purposes (including paper studies) before 90-days post-PSDAR submittal.
 - **The opportunity exists to clarify this language such that it is clear (consistent with guidance in RG 1.184) that this is for decommissioning planning in the form of paper studies (for example developing engineering design documents, work package preparation, and licensing actions). This does NOT include physical work (e.g., moving, dismantling, or decontaminating equipment) or spent fuel management planning.**
- Comment – Commingling of funds (pages 2, 4, & 10)
 - Definition and discussion should clarify use of term to identify that commingling of funds in the DTF is allowed (for decommissioning, spent fuel management, and site restoration) provided that these funds must have been clearly accounted for, and reported as such, in a manner which is transparent and easily delineated from time of initiation of the DTF, and reflected in biennial decommissioning funding assurance submittals and other communications to the NRC until the license has been terminated.
 - Also, consider adding a good example in the guidance document of where a licensee has appropriately commingled its funds.
- Comment – NRC Past Practice (pages 8-9 Last/First ¶)
- Staff disagrees with assertions in language regarding NRC past practice. Language in document asserts that the “NRC’s reliance upon decommissioning cost estimates . . . is indicative of their reasonableness and the expectation that the NRC would accept them formally.” The NRC staff does not formally accept or approve the DCE. Staff also disagrees with language in document which asserts that the NRC staff’s SERs regarding preliminary decommissioning cost estimates under 50.75(f)(3) “constitute NRC’s approval that decommissioning costs presented in the estimates are true, accurate, and allowable.”

- **The NRC staff does not formally approve the pre-shutdown preliminary decommissioning cost estimate submitted under 50.75(f)(3) or the post-shutdown site-specific DCE submitted pursuant to 50.82(a)(8)(iii).**
- Question – Decision Tree (page 11)
 - What is the purpose of including the DCE (box 1.1) in the flow chart? Including the DCE in the decision tree suggests that an expense that is part of the decommissioning cost estimate is legitimate because the DCE has been approved by NRC. However, the NRC staff does not approve DCEs. Accordingly, box 1.1 should not be included in the flow chart. Why doesn't the flow chart begin with box 1.2?
- Question – Decommissioning Cost Estimate Discussion (page 4 – 1)
 - "During the course of developing the site-specific DCE in accordance with the NRC guidance in Regulatory Guide (RG) 1.202, licensees should clearly account for and include in the DCE those activities that are necessary to decommission the facility pursuant to the definition provided in 10 C.F.R. § 50.2, or are clearly necessary to remove the facility or site safely from service in order to facilitate decommissioning.
 - Examples of such activities include maintaining emergency preparedness capabilities, physical security, property taxes, insurance and fees for attorneys and consultants."
 - **Where do these examples originate from – guidance documents? Please identify the guidance documents and the relevant pages in them that support the assertion that these specific activities are necessary to decommission the facility or remove it safely from service.**
- Comment – ISFSI Decommissioning Discussion (pages 5 & 6)
 - It appears unclear as to the purpose of this language in document. **Clarify what was intended by this section.**
- Comment – Decision Tree and Examples (page 11)
 - The "Decision Tree" would benefit from a specific section that addresses the thinking and logic behind each critical point in the "Decision Tree." This section could immediately follow the "decision tree" flow chart, but come before individual examples are presented.