

DOCKET NO.: 70-143

LICENSEE: NUCLEAR FUEL SERVICES, INC.

SUBJECT: SAFETY EVALUATION REPORT: APPROVAL OF NEW FINANCIAL  
ASSURANCE INSTRUMENT (COST ACTIVITY CODE  
NUMBER L33393)

## 1. BACKGROUND

By letter dated October 22, 2015, and supplemented by letter dated January 7, 2016, Nuclear Fuel Services, Inc. (NFS) requested an amendment of their license application (SNM-124) to replace a decommissioning financial assurance instrument (government contract clause) with a new financial assurance instrument (letter of credit).

## 2. DISCUSSION

The U.S. Nuclear Regulatory Commission (NRC) staff reviewed the subject submittal using the Standard Review Plan for financial assurance (NUREG-1757, Vol. 3, Rev. 1) to determine compliance with applicable paragraphs of 10 CFR 70.25. In particular, the NRC staff used criteria specified on page 4-19, Checklist 6-A on page A-65, and Checklist 6-B on page A-66.

### 2.1 Identifying Information

#### 2.1.1 Regulatory Requirements

10 CFR 70.25(e)(1)(v) requires an original instrument to cover the cost estimate for decommissioning. 10 CFR 70.25(f) requires that the financial instrument include the licensee's name, license number, and docket number; and the name, address, and other contact information of the issuer, and, if a trust is used, the trustee. Financial assurance for decommissioning must be provided by one or more methods stated in 10 CFR 70.25(f).

NFS submitted an irrevocable letter of credit dated December 21, 2015 issued by Credit Agricole CIB covering \$8,076,000 of the estimated decommissioning cost for the Erwin, Tennessee site. The letter of credit states it is established at the request of NFS, identifying the subject facility by license number, docket number, and street address. The submission includes revised Schedule A for the previously approved standby trust agreement. Throughout the financial instrument, the letter of credit is referred to as an irrevocable letter of credit. The letter of credit has specific expiration date.

The letter of credit is signed by two different associates of Credit Agricole Corporation and Investment Bank. The Letter of Credit is dated.

Credit Agricole CIB issued the signed original Letter of Credit to NRC, the beneficiary.

In the letter of credit, Credit Agricole CIB acknowledges that the letter of credit is issued in accordance with regulations within the authority of the NRC, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974. Credit Agricole CIB acknowledges 10 CFR Part 70 to provide assurance of funds for decommissioning.

Credit Agricole CIB commits to immediately informing both NRC and NFS of any notice received, or action filed, alleging insolvency or bankruptcy or any violation of regulatory requirements that could result in the charter or business license of the bank being suspended or revoked.

The letter of credit identifies the NRC license number and docket number. In the context of the letter of credit, the date of the signatures is associated with, or taken to be the date of the letter of credit.

The letter of credit contains sufficient information for the NRC staff to contact Credit Agricole CIB in the event of a demand for payment.

The letter of credit states the regulatory obligation of NFS as the reason for the letter of credit. Credit Agricole CIB will give notice to both NRC and NFS of insolvency or violation of banking requirements that could compromise the assurance to provide the subject funds.

## 2.1.2 NRC Finding

The NRC staff finds that the licensee meets the requirement of 10 CFR 70.25(f) as the financial instrument includes the required identifying information.

## 2.2 Renewing Surety Method

### 2.2.1 Regulatory Requirements

10 CFR 70.25(f)(2)(i) requires the surety method or insurance to be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the insurer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

### 2.2.2 Licensee Submittal

The Letter of Credit issued by Credit Agricole CIB is effective on December 21, 2015, and expires on December 21, 2016, but automatically renews for a period of one year on December 1, 2016 and on each successive expiration date. Credit Agricole CIB will notify both NRC and NFS, by courier or certified mail, at least 90 days before the current expiration date, of a cancellation. Credit Agricole CIB states that if NFS is unable to secure alternative financial assurance 30 days after the cancellation notice, NRC may draw upon the full value of the Letter of Credit.

By the revised Schedule A of the standby trust agreement, NFS assures that \$21,626,000, will be available for decommissioning the Erwin, TN facility. This is in addition to the approximately \$375,000,000 of DOE/Naval Reactors funding through a statement of intent.

As stated in the letter of credit, a draft may be made under two conditions. First, the draft makes reference to the letter of credit number. Second, the signed and dated statement quotes a statement from the letter of credit certifying that payment is being made pursuant regulations under the authority of the NRC.

In the letter of credit, no credit is taken for earnings on any financial assurance mechanism.

### 2.2.3 NRC Staff Evaluation

The NRC staff determined that the letter of credit is open-ended because it automatically renews unless a definite action is taken by Credit Agricole CIB to cancel the letter. The letter of credit contains a specific expiration date. The letter of credit is for a limited, stated amount. Credit Agricole CIB has an obligation to pay the beneficiary only upon presentation of a draft that is specified in the letter of credit.

Credit Agricole CIB commits to informing NFS and the NRC of intentions to cancel the letter of credit 90 days or more prior to the renewal date. If NFS is unable to establish an alternate means of financial assurance within 30 days of the cancellation notice, Credit Agricole CIB commits to allowing NRC to draw upon the Letter of Credit for the full value.

### 2.2.4 NRC Finding

The NRC staff finds that the licensee meets the requirement of 10 CFR 70.25(f)(2)(i) by having a surety method that automatically renews, has commitments to notify both NFS and NRC, and allows NRC to draw on the Letter of Credit for the full amount prior to the expiration date.

## 2.3 Commission as a Beneficiary

### 2.3.1 Regulatory Requirements

10 CFR 70.25(f)(2)(ii) requires surety method or insurance to be payable to a trust established for decommissioning costs. The trustee and the trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

### 2.3.2 Licensee Submittal

Credit Agricole CIB states that when the Letter of Credit is drawn on, Credit Agricole CIB will honor the draft within 30 days. The amount of the draft will be deposited in the Standby Trust Fund of NFS.

The submittal includes Amendment No. 2 to a Standby Trust Agreement. The Trustee is MUFG Union Bank, N.A. The beneficiary of the Standby Trust Agreement is the NRC.

### 2.3.3 NRC Staff Evaluation

The NRC staff determined that the Letter of Credit is payable to a trust established for decommissioning costs. The trustee, MUFG Union Bank, N.A., and trust, had been previously approved by the NRC staff.

### **2.3.4 NRC Finding**

The NRC staff finds that the licensee meets the requirement of 10 CFR 70.25(f)(2)(ii) surety method (i.e., Letter of Credit), issued by a regulated institute which is payable to a Standby Trust Agreement.

#### **2.4 Duration of the Surety Method**

##### **2.4.1 Regulatory Requirements**

10 CFR 70.25(f)(2)(iii) requires that the surety method or insurance remain in effect until the Commission has terminated the license.

##### **2.4.2 Licensee Submittal**

The Letter of Credit provided to the NRC is entitled Irrevocable Letter of Credit and is automatically renewed unless 90 days or more prior to the renewal date the issuer notifies of its intention not to renew and full amount will be paid to the beneficiary if licensee fails to provide a replacement acceptable to the Commission within 30 days after notification of cancellation. The NRC holds the signed original Letter of Credit.

##### **2.4.3 NRC Finding**

The NRC staff finds that the licensee meets the requirement of 10 CFR 70.25(f)(2)(iii) in that the surety method remains in effect until another form of satisfactory financial assurance is in place and approved by NRC or the license is terminated.

### **3. ENVIRONMENTAL REVIEW**

This action involves the amendment of a license to change financial assurance requirements. A proposed action is categorically excluded from an environmental review under 10 CFR 51.22(c)(10) if it involves the amendment of a license to change surety, insurance, and/or indemnity requirements. Therefore, neither an environmental assessment nor an environmental impact statement is warranted for this action.

### **4. CONCLUSION**

Based on the preceding review, using the model template and checklists of the Standard Review Plan, for a letter of credit, the NRC staff concludes there is reasonable assurance NFS has adequate decommissioning financial assurance in place to cover \$8,076,000 of the decommissioning cost estimate for SNM-124. Hence, approval of the letter of credit will not constitute an undue risk to public health and safety. The NRC staff finds that the letter of credit submittal meets the requirements of 10 CFR 70.25.

### **5. PRINCIPAL CONTRIBUTORS**

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