

SAFETY EVALUATION REPORT

DOCKET NO.: 70-143

LICENSEE: NUCLEAR FUEL SERVICES, INC.

SUBJECT: AMENDMENT 6 - APPROVAL OF NEW FINANCIAL ASSURANCE
INSTRUMENTS (COST ACTIVITY CODE NUMBER: L33396)

1. BACKGROUND

By letter dated November 19, 2015, supplemented by letters dated March 15, March 22, and July 19, 2016, Nuclear Fuel Services, Inc. (NFS) requested approval of the following changes to decommissioning financial assurance instruments:

- Replace an existing letter of credit from Compass Bank for \$13.5M with a new letter of credit from Credit Agricole Corporation and Investment Bank (CIB) for the same amount.
- Replace an existing standby trust agreement from Union Bank listing 2 letters of credit (\$13.5M and \$8.1M) with a new standby trust agreement from Regions Bank listing the same letters of credit.
- Replace a second standby trust agreement from Union Bank listing 3 letters of credit (\$3.1M, \$3.8M, and \$11.3M) with a new standby trust agreement from Regions Bank listing the same letters of credit.

2. DISCUSSION

2.1. REVIEW PROCESS

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

2.1.1. Identifying Information

Paragraph 70.25(e)(1)(v) of 10 CFR requires an original instrument to cover the cost estimate for decommissioning. Paragraph 70.25(f) of 10 CFR 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).

Nuclear Fuel Services (NFS) submitted an Irrevocable Letter of Credit dated February 16, 2016, issued by Credit Agricole CIB covering \$13,550,000 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 letter of credit is referred to as an irrevocable letter of credit. The letter of credit has a specific expiration date.

NFS also submitted two standby trust agreements (STAs) - one dated March 1, 2016, and the other dated March 11, 2016. Both STAs are issued by Regions Bank. The March 1, 2016 STA has been established to receive funds from the new February 16, 2016, letter of credit and a previously approved letter of credit dated December 21, 2015, in the amount of \$8,076,000. The March 11, 2016 STA has been established to receive funds from three previously approved letters of credit; a letter of credit in the amount of \$11,345,345 dated May 12, 2004, a letter of credit in the amount of \$3,785,680 dated July 19, 2011, and a letter of credit in the amount of \$3,133,975 dated May 5, 2003.

The new letter of credit is signed by two different associates of Credit Agricole CIB. The new 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. The letter of credit specifies an issuance date.

The letter of credit and the STA contain sufficient information for the NRC staff to contact Credit Agricole CIB and Regions Bank in the event the financial assurance is drawn on.

The letter of credit states the regulatory obligation of NFS as the reason for the letters 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 instruments include the required identifying information.

2.2. Renewing Surety Method

2.2.1. Regulatory Requirements

Paragraph 70.25(f)(2)(i) of 10 CFR 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 February 16, 2016, and expires on March 1, 2017, but automatically renews for a period of one year on March 1, 2017, 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 dates, 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.

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 to 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 letters 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 full value of the letter of credit.

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

Paragraph 70.25(f)(2)(ii) of 10 CFR 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 licensee has submitted an STA to receive proceeds from the letters of credit. The beneficiary of the STA 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 trust and trustee, Regions Bank, N.A., have been found acceptable as the trust agreement meets the intent of the guidance template and the trustee is regulated.

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

Paragraph 70.25(f)(2)(iii) of 10 CFR 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 and STA.

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 licensee 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 \$13,550,000 of the decommissioning cost estimate for SNM-124. Hence, approval of the letter of credit and STAs will not constitute an undue risk to public health and safety. The NRC staff finds that the funding instruments submitted meet the requirements of 10 CFR 70.25.

5. PRINCIPAL CONTRIBUTORS

Kevin Ramsey
Ken Kline