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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JUL 3 1979

Patrick J. Haynes, Staff Counsel
Legislative Council
Legislative Services Agency
302 State House
Indianapolis, Indiana 46204

Dear Mr. Haynes:

Your letter of June 4, 1979 was referred to me for further response. As you may know, the NRC is currently reevaluating its policies regarding decommissioning, including assuring funds for decommissioning. Because the Commission has not established any new policies regarding decommissioning, please realize that any conclusions made in this letter reflect only preliminary staff work and should not be taken as official Commission policy.

Proposed Indiana House Bill 1379 provides a comprehensive treatment of the sinking fund approach to assuring funds for decommissioning nuclear facilities. The bill appears to cover adequately most contingencies that could conceivably arise from changes in interest or inflation rates, in technology, or in estimated reactor life. From an equity point of view -- i.e., that those who receive the benefits of a facility should pay all expenses associated with it -- the sinking fund approach is excellent. Also, the cost of the sinking fund approach is not prohibitively expensive, particularly if tax-exempt, when compared to either the deposit-at-start-up or the unfunded reserve approaches to decommissioning funding.

The fund, as structured, seems to meet the criteria used by IRS to determine whether annual deductions would be tax-exempt. IRS's major thrust seems to be that, to preserve a tax-exempt status, use or control of the funds that could otherwise provide a company with short-term capital and earnings should be denied it. Since the NRC cannot speak for IRS, I suggest that you contact it directly for a "revenue ruling." My understanding of this procedure is that you should send as many details as possible on the how the fund would be structured to: John Withers, Assistant Commissioner-Technical, Internal Revenue Service, 1111 Constitution Avenue, Washington, D.C. 20224.

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One drawback to a sinking fund is that it does not provide assurance that funds will be available in case of premature reactor shut-down. Only funds for decommissioning deposited in full at time of reactor start-up provide assurance that money will be available in case of premature shut-down; and even this is true only to the extent that decommissioning costs have been estimated correctly and that periodic adjustments have been made as necessary.

Another alternative that could be used in conjunction with a sinking fund to provide a higher level of assurance is premature reactor shut-down insurance. We have contacted the nuclear insurance pools regarding the possibility of their offering such insurance. Although they are currently studying the feasibility and costs of this, it is by no means clear that they will be able to offer such insurance, particularly in view of the potential drain on insurance capacity resulting from the Three Mile Island accident.

NRC will shortly be publishing a preliminary staff position paper on funding for decommissioning nuclear facilities that elaborates on the points made above. We will send this paper to you as soon as it is available. If you have any additional comments, please call me or Bob Wood of my staff at 301-492-8336.

Sincerely,

Jerome Saltzman, Chief
Antitrust & Indemnity Group
Office of Nuclear Reactor Regulation

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