

Docket 70-1257
License SNM-1227

MAR 24 1994

Mr. L. J. Maas, Manager
Regulatory Compliance
Siemens Power Corporation
2101 Horn Rapids Road
Richland, Washington 99352-0130

Dear Mr. Maas:

SUBJECT: DECOMMISSIONING FINANCIAL ASSURANCE DOCUMENTATION (TAC NO. L21681)

This is in reference to your letters dated November 10, and December 14, 1992, and March 25, 1993, and draft documentation of financial responsibility for decommissioning of the Richland manufacturing facility.

We have completed a review of your responses to our request for additional information dated October 20, 1992; your draft funding plan documents dated March 25, 1993; and Chapter 7 of your license renewal application dated August 1992. During this review, we also referred to the Waste Management Engineering Plan, dated August 1993, submitted on January 7, 1994, and Mr. Loren Maas' letter of March 1, 1994, as supportive information related to waste management. Our review has identified that additional information is needed to make a final decision on the adequacy of the Decommissioning Funding Plan. This additional information is described in the enclosure to this letter. The additional information should be provided in the form of a revised cost estimate, funding plan, and Chapter 7 within 60 days of the date of this letter. Please reference the above TAC NO. in future correspondence related to this request.

As you are aware, 10 CFR 70.23(A)(5) states that the Nuclear Regulatory Commission will approve an application for a license if the Commission determines that the applicant appears to be financially qualified to engage in the proposed activities in accordance with the regulations. The Decommissioning Funding Plan is an important part of this demonstration. NRC must deny an application for renewal if the applicant cannot demonstrate compliance with this provision of the rule.

If you have any questions or need further information, please contact me at 301-504-2505.

Sincerely,

Original Signed By:
Mary Adams
Licensing Section 2
Licensing Branch
Division of Fuel Cycle Safety
and Safeguards, NMSS

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Enclosure: As stated

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(3) Submit an Alternative Financial Assurance Mechanism or Clarify the Guarantor's Ability to Pass the Financial Test

It appears that the guarantor's financial statements have been prepared in accordance with German generally accepted accounting principles, rather than U.S. generally accepted accounting principles.¹ Although NRC regulations and guidance do not address the issue of whether foreign accounting practices are acceptable for purposes of NRC's financial test, the financial test was developed based on an analysis of financial data for U.S. firms; consequently, NRC's financial test may not be applicable or effective when used in conjunction with financial data, such as the guarantor's, that was prepared in accordance with foreign accounting practices. Because of the uncertainty regarding the applicability of German accounting practices to NRC's financial test, SPC should either use an alternative financial assurance mechanism or demonstrate that use of German generally accepted accounting principles does not reduce the stringency of NRC's financial test.

(4) Submit an Executed Copy of all Financial Assurance Documents (10 CFR Part 70.25 and *Regulatory Guide 3.66*, page 3-23)

All documents submitted by SPC in support of the parent company guarantee and amendments to the standby trust fund are unexecuted drafts and do not provide any financial assurance in their present form. In order to be effective, the following documents must be signed: the parent guarantee agreement, the letter from the guarantor's chief financial officer, the letter from SPC's chief executive officer, the special report from the certified public accountant, the amendment to the standby trust agreement, and all other certifications included in the submission. SPC should submit executed copies of all documents required to demonstrate a valid parent company guarantee, as required by 10 CFR 70.25 and as recommended in *Regulatory Guide 3.66*, "Standard Format and Content of Financial Assurance Mechanisms Required For Decommissioning Under 10 CFR Parts 30, 40, 70, and 72" (June 1990), page 3-23.

¹ German generally accepted accounting principles are referenced twice in the draft special report from the guarantor's certified public accountant. Although the submission does not include the accountant's opinion on the guarantor's financial statements, it does include the guarantor's annual report for 1992, which states that the 1992 financial statements "have received an unqualified audit opinion from KPMG Deutsche Treuhand-Gesellschaft AG Wirtschaftsprüfungsgesellschaft." This reference is also consistent with the use of German accounting principles.

- (5) Submit a Revised Auditor's Special Report and Schedule Confirming the Chief Financial Officer's Letter (10 CFR Part 30, Appendix A, Section II.B)

In 10 CFR Part 30, Appendix A, Section II.B requires the auditor's special report to compare and address the validity of all data in the financial test demonstration in the letter from the guarantor's chief financial officer (CFO) that were taken or derived from the annual financial statements. The draft auditor's special report submitted by SPC addresses only two of the financial data items in the financial test: net worth and tangible net worth. The report does not address other financial data taken or derived from the financial statements. In particular, the report should, but does not, address total liabilities (line 2), current assets (line 5), current liabilities (line 6), and total assets in United States (line 9).² To ensure the validity of the data used in the financial test, as required in 10 CFR Part 30, Appendix A, the auditor's special report should be revised to address all data in the financial test demonstration that were taken or derived from the annual financial statements.

- (6) Demonstrate that a Parent-Subsidiary Relationship Exists Between the Guarantor and the Licensee (*Regulatory Guide 3.66*, page 3-23)

SPC's first submission (July 1990) included a certification by the Secretary of Siemens Corporation that (1) Siemens Aktiengesellschaft, a corporation of the Federal Republic of Germany, is the 100 percent owner of Siemens Corporation, a Delaware Corporation; (2) Siemens Corporation is the 100 percent owner of Siemens KWU, Inc., a Delaware corporation; and (3) Siemens KWU, Inc. is the 100 percent owner of SPC, Advanced Nuclear Fuels Corporation. This certification does not, however, mention the current licensee (Siemens Power Corporation).

Regulatory Guide 3.66, page 3-23, recommends that licensees using parent company guarantees submit evidence that the corporate parent has majority control of the licensee's voting stock. A parent-subsidiary relationship must exist between a guarantor and a licensee in order for the parent guarantee to be a valid method of financial assurance under NRC regulations. SPC should provide appropriate evidence, such as a revised corporate resolution certifying that SPC and its parent guarantor are separate and distinct corporate entities and that the parent controls a majority of the voting stock of the subsidiary.

² Had the guarantor used the bond rating alternative of the financial test, the special report would need revision only to address the guarantor's total assets in the United States (line 9).

- (7) Revise Recitals 8 and 9 of the Parent Guarantee Agreement to Specify Recommended Deadlines Regarding Annual Financial Test Updates and Alternative Financial Assurance (*Regulatory Guide 3.66*, page 4-43)

Recital 8 of the submitted guarantee states that the guarantor agrees to submit revised financial statements, financial test data, and a special auditor's report and reconciling schedule annually within 120 days of the close of the parent guarantor's fiscal year. Recital 8 of the recommended wording in *Regulatory Guide 3.66*, page 4-43, states that the licensee should agree to update these materials within 90 days of the close of the guarantor's fiscal year. Similarly, Recital 9 of the submitted guarantee states that if the guarantor fails to meet the financial test, it will notify NRC and the licensee within 120 days of the end of the fiscal year, and will provide alternative financial assurance within 150 days of the end of the fiscal year if the licensee has not done so. Recital 9 of the recommended wording in *Regulatory Guide 3.66*, page 4-43, only allows 90 days and 120 days, respectively, for notifying NRC and the licensee and for providing alternative financial assurance.

The recommended deadlines help ensure that, each year, the guarantor promptly determines whether it still passes the financial test and, if not, that alternative assurance is obtained promptly by the licensee or the guarantor. The deadlines also ensure that these actions are taken before the guarantor's financial condition can deteriorate to the point that it may be unable to provide alternative financial assurance. SPC should submit a revised guarantee that specifies the recommended limits for financial test updates and alternative assurance, as recommended by *Regulatory Guide 3.66*.

- (8) Original Documents

Documents submitted by SPC should be originally signed duplicates, as recommended in *Regulatory Guide 3.66*. Unless the documents have been properly signed, NRC cannot be certain that the financial assurance mechanism is enforceable.

Request for Additional Information
Decommissioning Funding Plan and Financial Assurance
Documentation dated July 19, 1990, and May 25, 1993
Siemens Power Corporation
Docket 70-1257

(1) Cost Estimate Assumptions

The 1990 cost estimate does not include disposal of the waste inventory in the lagoons and the containerized materials stored on site. The plan assumes that the lagoon inventory will be treated in the ammonia recovery facility and lagoon uranium recovery facility and discharged to the Richland Wastewater Treatment Plant via sanitary sewer. Although Siemens maintains that the containerized materials are being stored for uranium recovery via incineration, solvent extraction, equipment decontamination, or other means that have not been determined, the decommissioning plan should address the possibility that some or all of these materials may need to be shipped for disposal. The Waste Management Engineering Plan, August 1993, describes management of the containerized materials in terms of sorting, treatment, and storage, but not disposal, not even disposal of residues following treatment for uranium recovery. The decommissioning plan should include costs for disposal of this inventory, until the inventory is removed from the site or decontaminated to levels where radioactive waste disposal is no longer required.

(2) Incorporate a 25 Percent Contingency Factor into the Cost Estimate
(NUREG/CR-1754, Addendum 1)

In the letter to NRC dated December 14, 1992, SPC states that "We will revise our cost estimate to include a 25 percent contingency factor as requested." The submission includes no indication, however, that the contingency factor has in fact been raised to 25 percent (from 15 percent). Although draft financial assurance has been provided in the amount of \$25,000,000 for a cost estimate of \$11,000,000, the "implied" contingency factor of 125 percent has not been incorporated into the cost estimate. Table I-7.1 of the renewal application includes a 16.5 percent contingency. Because the NRC-approved cost estimate is the basis for the required level of financial assurance, the estimate should be revised to account for unanticipated costs. Otherwise, SPC may later be able to reduce the amount of its financial assurance to a lesser, inadequate amount (i.e., \$11,000,000). SPC should increase its contingency factor in the decommissioning plan cost estimate, and in Chapter 7 of the license, to at least 25 percent of decommissioning costs, and should commit in Chapter 7 to maintaining the contingency factor at a minimum of 25 percent in future adjustments to the estimate.