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GE Nuclear Energy

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August 20, 1990

Mr. Samuel Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Petition for Reconsideration

Dear Mr. Secretary:

General Electric Company ("GE") hereby requests that the Commission reconsider and reverse the denial of specific exemption from the financial assurance instrument requirements of Parts 50 and 70 of the Commission's amended decommissioning rule, so that GE can satisfy the financial assurance requirements by submitting a Company guarantee which otherwise meets or exceeds the criteria for qualifying parent company guarantees under 10 C.F.R. Part 30, Appendix A. GE's request for specific exemptions was filed on March 16, 1990 and denied by letter from Mr. R.M. Bernero, Director of Nuclear Material Safety and Safeguards, dated July 31, 1990. A statement in support of the present Petition is enclosed.

GE further asks that the Commission immediately grant GE a temporary extension of time to the current deadline, August 31, 1990, for its implementation of financial instruments for decommissioning funding, and that such extension remain in force until fifteen (15) days after GE receives notification of the Commission ruling on this Petition.

Sincerely yours,

B. Wolfe

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cc: Chairman Kenneth M. Carr
Commissioner Kenneth C. Rogers
Commissioner James R. Curtiss
Commissioner Forrest J. Remick
James M. Taylor, Executive Director for Operations
Robert M. Bernero, Director, Office of Nuclear Material Safety and Safeguards
William Parler, Esq., General Counsel
Stuart Treby, Esq., Office of the General Counsel

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STATEMENT IN SUPPORT OF
PETITION TO RECONSIDER DENIAL OF
REQUEST FOR SPECIFIC EXEMPTIONS UNDER
10 C.F.R. PARTS 50 AND 70

A. INTRODUCTION

General Electric Company ("GE") hereby requests that the Commission reconsider its denial of GE's Request for Specific Exemptions (the "Request") from the financial assurance requirements of Parts 50 and 70 of the Commission's amended decommissioning rule[1/] and enable GE to satisfy the financial assurance requirements by submitting a self-guarantee which otherwise meets or exceeds the criteria for qualifying parent company guarantees under 10 C.F.R. Part 30, Appendix A ("Appendix A"). GE incorporates herein by reference its Request for Specific Exemptions, dated March 16, 1990, a copy of which is attached hereto for the convenience of the Commission. The background, organization and financial standing of GE have not changed in any material respect since March 16, 1990, and the licenses with respect to which relief is requested under the present Petition are the same as those covered by the original Request.

As discussed more fully hereinafter, GE submits that the bases for the denial of exemptions set forth in the Denial

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1/ General Requirements for Decommissioning Nuclear Facilities, 53 Fed. Reg. 24018 (June 27, 1988) ("Decommissioning Rule" or "Rule").

Letter and the supporting Safety Evaluation Report ("SER") do not justify the denial. Further, new information available now from financial assurance filings by other licensees since the end of July warrants reconsideration of the exemption request denial.

B. EXPANDED REGULATORY BASES FOR PETITION

At the time GE's Request was submitted, other licensees had not yet submitted to the NRC their financial assurance mechanisms. Therefore, GE was limited to the assertion that, because of its singular financial strength and stability, its self-guarantee would be the functional equivalent of a qualifying parent company guarantee under the Rule, and would achieve the NRC's stated purpose for the Rule (at least as well as, if not better than, the financial assurance mechanisms expressly permitted by the Rule). That purpose, as set forth in the Statements of Consideration of the Rule, is "that there be reasonable assurance of funds for decommissioning." 53 Fed. Reg. at 24031.

The GE Request for Specific Exemptions was filed pursuant to 10 C.F.R. Sections 50.12 and 70.14. More specifically, GE asserted therein that specific exemptions were justified on the basis of "special circumstances" within the definition of

Section 50.12(a)(2)(ii) of the Commission's regulations because "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." Id. 50.12(a)(2)(ii)(emphasis added).[2/] Based on newly developed evidence which was not available at the time the Request was submitted -- namely, the means used by other Part 50 and Part 70 licensees to provide financial assurances under the Rule -- GE can now expand its statement of special circumstances supporting the grant of specific exemptions to include that "[c]ompliance would result in . . . costs that are . . . significantly in excess[3/] of those incurred by others similarly situated" and that "[t]here are present . . . material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption." 10 C.F.R. 50.12(a)(2)(iii) and (vi).

2/ As noted in the GE's Request for Specific Exemptions, the specific exemption provision of Part 70 does not require a showing of special circumstances before the Commission may consider the appropriateness of the exemption. See Request at 12-13 (comparing 10 C.F.R. 50.12(a)(2) and 70.14).

3/ In considering the significance of costs, the Commission should look not only to the compliance costs in the first year, when these costs are at their lowest point due to certification for materials licenses. Rather the Commission should recognize that annual costs will rise considerably over the decades that these licenses will remain in force, and that in absolute terms (though concededly not in comparison to GE's total income or assets -- GE is not claiming a "hardship" exists) these accumulated costs will be quite significant.

As will be shown more specifically below, one foreign-owned fuel fabricator competitor of GE has complied with the Rule by providing a parent company guarantee which is cost-free to the licensee and its parents; and parent company guarantees have been provided by two other competitors of GE in the nuclear business, whose resources are apparently only those of its more smaller subsidiary companies. Numerous non-utility (university) reactor licensees have complied with the Rule by promising to seek, in the future, appropriations from their respective state legislatures -- again, a mechanism which is cost-free to the licensee and, in GE's view, a considerably less reliable means of financial assurance than a GE self-guarantee. Thus, the Rule, if no exemption were granted, would over a period of years impose on GE Nuclear Energy substantial costs (conservatively estimated, millions of dollars over the terms of GE's licenses for non-refundable line- or letter-of-credit charges) which significantly exceed those to be borne by other similarly situated licensees, without providing any better protection for the public health and safety. It is unlikely that the Commission anticipated these disparate cost impacts when it adopted the Rule.

C. ANALYSIS AND DISCUSSION

1. Arguments Made in the Request for Specific Exemptions

Before going on to discuss new evidence in support of specific exemptions for GE, it may be helpful to summarize briefly the arguments set forth in GE's March 16, 1990 Request for Specific Exemptions. GE first demonstrated through a number of exhibits, including its Annual Report for 1989, that its vast financial resources make it singularly well-qualified to provide adequate financial assurance of decommissioning through a self-guarantee, coupled with an appropriate financial test and annual certification thereto. GE manifestly exceeds, in one instance by three orders of magnitude, the financial criteria in Appendix A for a parent company guarantor. There can be no reasonable doubt about GE's current financial capabilities.

The Request then asserted that the Decommissioning Rule should not be applied so as to prohibit a non-electric-utility licensee with immense financial strength from giving a self-guarantee as the means of providing "reasonable assurance that, at the time of termination of operations, adequate funds are available so that decommissioning can be carried out in a

safe and timely manner . . . ."[4/] (Emphasis supplied.) 53 Fed. Reg. at 24033.

The Request went on to point out that GE could, and intended to, provide a parent company guarantee to its wholly-owned subsidiary, Reuter-Stokes, secured by the very same assets which the Rule, anomalously, held could not be considered as a basis for decommissioning funding assurance under GE's own licenses. It also pointed out that GE was penalized under the Rule for not creating a subsidiary to hold its licenses, or creating a new parent to provide a guarantee, and thus the Rule places form over substance.[5/]

The GE Request further explained why the self-guarantee proposal was not at odds with the rationale for the Commission's determination to delete the internal reserve from its list of acceptable funding mechanisms -- a decision which, according to the Rule's Statements of Consideration, was based primarily on financial considerations applicable to electric

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4/ This is the Commission's stated objective. It was, and remains, GE's position that a self-guarantee and financial test by GE provides the requisite level of "reasonable assurance."

5/ GE suggested in its Request for Specific Exemptions that denial would create an incentive for licensees to establish a corporate subsidiary to carry out licensed activities solely in order to permit the licensee to provide a parent company guarantee. Request at 22-23. As amplified hereinafter, the financial assurance filings by other licensees substantiate this observation.

utility licensees, but not to GE. It also distinguished[6/] the proposed self-guarantee from unmonitored self insurance or an internal reserve -- the key difference being the proposed annual recertification that GE continues to meet the Appendix A criteria (something more than licensees themselves must do). Finally, the Request gave examples of other instances under Federal law in which a self-guarantee, coupled with a financial test, was sufficient to satisfy concerns that funding would be available for future health and safety or environmental obligations.

2. The Dissent by Commissioner Curtiss

Commissioner Curtiss, the sole member of the Commission to set forth his views concerning the GE Request for Specific Exemptions, strongly disapproved of the Staff's proposal to deny that request. The views expressed by Commissioner Curtiss are both incisive and insightful, and GE hereby concurs in and adopts them. He first noted that the Commission's grounds for rejecting the Staff proposal favoring the use of internal reserves for reactor licensees "would not seem to apply to a licensee that has exhibited the level of

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6/ In this, GE relied on a 1985 Memorandum from the Commission's own Executive Legal Director, cited at pages 18-19 of the Request.

financial stability and assets of GE." In reaching this conclusion, Commissioner Curtiss recalled that the Commission's own special consultants had, even with respect to utility licensees, recommended that the use of internal reserves be accepted. See NUREG/CR-3899, September 1984; see also NUREG-0584, Rev. 3, March 1983. Commissioner Curtiss also recalled that, in the analogous field of low-level waste repository decommissioning funding, the Commission had, in 1982, "held open the possibility that the self-insurance approach could be justified for licensees who demonstrate their financial qualifications."

Noting that "GE's assets and financial qualifications far exceed those required to satisfy the Appendix A financial tests for parent company guarantees" and that GE could, in fact, give such a parent company guarantee on behalf of its subsidiary, Reuter-Stokes, Commissioner Curtiss concluded that the Rule created "an anomaly" as applied. Lastly, Commissioner Curtiss concluded that "the degree of financial assurance that we would have if we were to grant this exemption is no less than that which would be afforded by the option of a parent company guarantee . . .," the very argument at the heart of GE's March 16 Request.

3. Rebuttal of the Staff Position

In the SER accompanying the July 31 letter denying the GE Request for Specific Exemptions, the Staff makes a number of statements which we believe are unsupportable. GE takes this opportunity to respond to those statements.

The Staff first asserts that "[a]cting as a self-guarantor is equivalent to setting up an internal reserve" and then recapitulates at length why the Commission had concluded in 1988 that an internal reserve was not an adequate funding assurance mechanism for utility reactor licensees. That entire discussion is inapposite to the GE case. The GE Request made clear that GE was offering more than an internal reserve; and, as the Commission's Executive Legal Director made clear in 1985, the self-guarantee mechanism, when coupled with an annual financial test, offers a significantly greater level of assurance than does an uncertified form of self-insurance or internal reserve.

There can be no doubt of GE's present financial capacity to fund decommissioning of all its facilities at which NRC licensed activities take place. Bankruptcy or insolvency, or even financial calamity which could threaten a licensee's capacity to fund future decommissioning, are not overnight

events, especially not for a company the size and scope of GE. The annual recertification that the Appendix A financial criteria require will continue to apply. This will provide continuing assurance to the Commission that GE's internal financial capabilities either remain intact or, at worst, will not cease to exist until long after the Commission will have been forewarned and have been able to compel GE to take compensatory action. This is particularly true in light of the Appendix A test which GE would use -- a test which requires maintenance of a superior bond rating and is, therefore, quite sensitive to changes in financial standing.

The SER goes on to suggest that GE's current, concededly excellent financial standing and stability should be discounted because GE "is involved in many diversified financial activities that involve financial risks that are similar to or greater than utility companies." This assertion is at odds with the conclusions of Moody and Standard & Poor, two bond rating services whose reputations depend upon their ability to advise potential lenders which companies are most (and least) likely to pay off their long-term debts, with interest. These two bond ratings services (whose judgments are relied on as part of the Appendix A criteria) have both awarded GE the highest possible bond rating -- a rating which few NRC licensees, whatever their line of activity, enjoy.

The SER expresses concern about the "financial risks" of GE's diversified business. We submit, however, that multiple, profitable business sectors are a source of financial strength and stability, not a source of increased risk. The SER's comparison of GE's financial risk to that of a regulated nuclear utility (which is, typically, subject to after-the-fact prudency reviews and rate base exclusions) is conclusory and unpersuasive and reaches a result wholly at odds with the conclusions reached by those who risk their own investment funds with such companies.

Furthermore, the SER fails to provide any rationale for why the GE proposal for a self-guarantee does not provide the NRC with an adequate assurance of decommissioning funding. Under the principles which underlie the Commission's Backfit Rule, 10 C.F.R. 50.109, the Commission will not compel a licensee to exceed adequate protection of the public health and safety without a supporting cost/benefit analysis.[7/] In this instance, although the SER apparently concedes that GE can provide adequate

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7/ The Rule's Backfit Analysis states that the Commission determined that the backfits imposed under the Rule "are necessary to ensure the adequate protection of the public health and safety." 53 Fed. Reg. at 24043. GE respectfully submits that it has amply demonstrated that, as the Rule is applied to GE, the additional costs it imposes are not necessary to ensure such "adequate protection."

assurance of decommissioning funding as of today,[8/] it does not present any evidence that GE would (or, with annual certification of a financial test, even could) fail to provide such adequate assurance in the future. Notwithstanding all this, the SER made no attempt to present a cost/benefit justification of the denial of GE's request.

The SER states that the principal objection to the GE proposal is "that the public interest would not be enhanced by eliminating the requirement that a licensee must establish an external reserve for funding decommissioning." Yet, even if that were so (and GE views the elimination of needless expenditures as enhancing the public interest), that is not the standard for denial of a specific exemption request under Sections 50.12 and 70.14. To merit an exemption, it is

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8/ As earlier noted, the GE Request for Exemptions cited as its basis for specific exemptions "special circumstances" as defined by Section 50.12(a)(2)(ii), because application of the parent company guarantee provision "in the particular circumstances [of GE's more than adequate available resources] would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." (Emphasis added). GE submits that either ground is sufficient to justify the grant of a specific exemption and, moreover, that GE qualifies under both grounds. The Staff has addressed only whether application of the regulation would serve the underlying purpose of the Rule, ignoring whether application of the parent company guarantee restriction to a licensee capable of demonstrating more than adequate available funding for decommissioning is necessary to achieve the underlying purpose of the Rule.

sufficient for the requestor to show that it can achieve the same regulatory purpose and not present an undue risk to the public health and safety.

The SER also suggests that granting the GE Request might cause an undue "expenditure of staff time and resources necessary to monitor" GE's financial status. With respect to GE, at least, . Because GE is giving a parent company guarantee for Reuter-Stokes, the Staff will have to monitor GE's financial status each year in any event; accordingly, this Staff objection appears baseless. Nor is it "speculation" by GE (as the SER characterizes it) that Staff resources could be conserved by establishing a more stringent financial test for self-guarantors. For example, it is doubtful that many licensees have even AA bond ratings or tangible net worth of more than $1 billion. There is also no explanation in the SER of why establishing a higher financial threshold for self-guarantors would make the Rule unworkable or ineffective to achieve its stated purpose.

The SER seems to focus on the supposed benefit of a financial mechanism to "provide an independent commitment beyond that of the licensee to expend funds." It is worth examining some of these third-party "independent commitments" which the SER suggests will provide better financial assurance

than GE's self-guarantee. One such mechanism, satisfactory under the Rule and the Regulatory Guide (NUREG-3.66), is a letter of credit from an entity whose letter-of-credit operations are examined and regulated by a federal or state agency. NUREG-3.66, at 3.2.2.2. Another is a line of credit, for which the Regulatory Guide sets forth no criteria at all. NUREG-3.66, at 3.2.2.3. There is no NRC financial test, moreover, for the lending institutions which grant lines- and letters-of-credit -- another "anomaly" in light of contemporary concerns about the health of many lending institutions. The point is that the Rule permits a number of "independent commitments" which may be a great deal less trustworthy than a GE self-guarantee, even without an annual financial recertification.

By the same token, one can legitimately wonder how much greater comfort the Commission (or the public) should take in a university reactor licensee's undertaking to seek an appropriation for decommissioning from a state legislature at some unspecified, but timely, point in the future -- another financial assurance mechanism which the Rule permits. It is difficult to support the proposition that a promise to seek future funding from a state legislature (and how many states have AAA bond ratings?) is a more secure form of financial

assurance than a self-guarantee from GE. Since these licensees can comply with the Rule at no cost, the disparate cost impact of the Rule, to the detriment of GE, could hardly be more manifest.

The SER then points out that, for materials licensees, the Commission's proposed rule included no self-guarantee with a financial test as an acceptable funding assurance mechanism, but that the final Rule included a parent company guarantee mechanism (with a financial test) based on the corporate guarantees allowed by the Environmental Protection Agency ("EPA"). See 40 C.F.R. Parts 264, 265. What the SER neglects to point out is that the referenced EPA regulations, unlike the Rule, permit a self-guarantee by the regulated entity. Since the future financial assurance purpose of the EPA regulations is the same as that of the Rule, the SER's failure to explain why the NRC requires a more stringent regime than EPA constitutes a significant void in its supporting rationale.

Finally, the SER disputes GE's statement that penalizing GE for itself being the NRC licensee, instead of creating a subsidiary to hold the licenses -- so that GE could then provide a parent company guarantee to such subsidiary (thereby complying with the Rule) -- places "form over substance." The

SER says this GE argument is invalid because "the parent company will provide an independent commitment beyond that of the licensee to expend funds."[9/] We submit, however, that the proper issue, from a "reasonable assurance" standpoint, is whether the assets available for decommissioning funding are, and will continue to be, adequate to cover the eventual cost of decommissioning. Clearly, GE is no less firmly obligated to bear the cost of decommissioning because it is the licensee, rather than the parent of the licensee. Thus, notwithstanding the SER's premise that an independent commitment must, somehow, provide better protection for the public, GE reiterates its view that the Rule places form over substance.[10/] Indeed, the Rule punishes the financially strong and secure licensees and rewards the creation of narrowly-based licensee/subsidiaries whose only assets are those facilities at which licensed activities occur, as evidenced by compliance filings made public to date, as detailed below. In that sense, the Rule is clearly inconsistent with the public interest.

9/ See discussion above concerning the worth of some of the "independent commitments" permitted by the Rule.

10/ It is interesting to note that, if GE were to set up a subsidiary licensee, the "diversified financial activities" which the SER suggests are so risk-laden would remain within the GE corporate family. Yet unquestionably GE would qualify to provide a parent company guarantee under the Rule. When submitted to comparative analysis of the financial assurance methods available to similarly situated licensees, the Rule is riddled with inconsistencies allowing some licensees to rely on rather dubious financial assurances and compelling others, like GE, to establish redundant levels of financial protection.

4. New Evidence Available

Although it is not stated in the SER, it is difficult to escape the conclusion that a major, if not the principal, reason for the Staff's recommendation to deny the GE Request for Specific Exemptions was a concern that, if the GE and Westinghouse Requests were granted, it would invite numerous other licensee requests for similar relief. To avoid a major commitment of resources to the review of such requests, the Staff would be compelled to draw a new "bright line" for financial assurance by licensees.[11/]

Logically, as shown above, it should be enough if the licensee has the same assets and other financial qualifications which would suffice to enable it to provide a parent company guarantee if its licensed activities had a multi-level corporate structure. However, in light of the fact that GE so vastly exceeds the applicable Appendix A criteria, GE's Request expressed a willingness to "discuss with the NRC different financial criteria from those in Appendix A if the Commission determines that such a distinction is appropriate for a

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11/ Because of the time constraints involved in complying with, or obtaining an exemption from, the Rule, GE did not file a petition for rulemaking and, therefore, did not feel compelled to propose such a new "line."

guarantee method other than the parent company guarantee." Request at 8 n.7. GE contemplated that the NRC might, out of an abundance of caution or residual adherence to the view that an "independent commitment" by a third party was somehow safer than a self-guarantee, decide to establish higher bond rating or tangible net worth thresholds for self-guarantees than for parent company guarantees. GE also believed that, however high those thresholds might conceivably be set, GE would qualify. However, the Staff did not respond to the invitation to discuss such an approach with GE.

Now that July 27, 1990 has passed, and affected licensees have submitted to the NRC their financial assurance mechanisms, the validity of the GE position (and the paucity of other NRC licensees who could themselves meet substantially higher financial test thresholds for a self-guarantee) has become increasingly clear. There are, for example, relatively few non-utility reactor licensees. Of these, the largest number are state or state-supported colleges and universities which have complied with the Rule by providing "statements of intent" under Section 50.75(a)(2)(iv). The annual cost to licensees of providing such "statements of intent" is zero. One private university reactor licensee sought a specific exemption under Section 50.12(a)(2)(ii) and (iii).

As to those few reactor licensees which are neither utilities nor universities, GE and Westinghouse have both sought specific exemptions. Both are among the industrial giants of the United States, each having billions of dollars in tangible net worth. It is clear that any concern over a flood of requests by reactor licensees for permission to provide self-guarantees could easily be dispelled by the simple device of establishing sufficiently demanding financial test criteria so that only the most financially secure licensees could qualify. This could be accomplished through internal staff guidance on dealing with exemption requests, rather than a formal amendment to the Rule. The same approach would also provide an appropriate remedy as to materials licensees, the great multitude of whom are relatively small in terms of assets and have no bond ratings at all.

Of the more financially substantial materials licensees, five are nuclear fuel fabricators. GE and Westinghouse are two of these. A third fabricator, now a subsidiary of an ultimate foreign parent, has elected to comply with the Rule by submitting payment surety bonds, rather than a parent company guarantee. Another fabricator complied with the Rule by providing a bank letter of credit for its $750,000 certification amount. The fifth fuel fabricator has sought to comply with the Rule by submitting a parent company guarantee from its

domestic parent (though not its ultimate non-U.S. parent). There is, of course, no annual cost involved in such a parent company guarantee. As a result, this fuel fabricator is able to comply with the Rule at a cost which (unless specific exemptions are granted to other finarcially-qualified fuel fabricators) is less than that for any of its domestic competitors. GE submits that the Commission, in adopting the Rule, could not have anticipated such disparate effects on similarly situated entities.

This disparity of treatment also occurs in non-fuel fabrication areas of the nuclear business. We would note, in this regard, that the parent company guarantee submitted by one business competitor is provided by a corporation which described itself as inactive other than to function as a parent holding company for its investments in its subsidiaries. One of those subsidiaries is the licensee on whose behalf the guarantee is submitted and whose financial information supports the guarantee -- in effect, a form of self-guarantee. Another competitor furnished a parent company guarantee from a newly-formed holding company, a subsidiary of the licensee's former direct parent, which appears to have no assets other than the stock of the licensee. Again, the effect is a self-guarantee.

Plainly, this disparity in treatment of GE, under the Rule as thus far applied, places GE at a significant cost disadvantage with these competitors.

In sum, new evidence which has become available since July 27, 1990 strongly suggests that it would not be unduly burdensome on the Staff to evaluate self-guarantee requests from that limited number of licensees whose own assets and financial condition are so strong that their capacity to fund decommissioning is beyond reasonable dispute. Relatively few licensees are so burdened by the present rule, in terms of the annual cost of providing the required financial assurance, to even have the incentive to seek such relief. Fewer still (especially if a more stringent financial test from that in Appendix A were applied) could make the requisite showing of financial capacity. Therefore, any concern that granting the GE and Westinghouse requests for specific exemptions would lead to a flood of exemption requests lacks practical foundation.

Moreover, the new evidence now available demonstrates the existence of additional special circumstances for relief, under Section 50.12(a)(2), which could not be demonstrated prior to July 27, 1990, based on the public record then available to GE. This evidence, consisting of what other licensees are doing to comply with the Rule's financial assurance requirements, shows not only that others, similarly situated to GE, are permitted by

the Rule to meet the financial assurance requirements at a much lower cost, but also that cost disparities and other anomalies are arising which appear not to have been considered by the Commission when the Rule was adopted. Regulatory requirements that entail needless expenditures by licensees are never in the public interest, and GE petitions the Commission to eliminate such waste in this instance.

5. Extension of Time to Comply

GE is also petitioning the Commission to grant it an immediate temporary extension of time from the August 31, 1990 compliance deadline for implementation of financial assurance instruments, as established by the NRC's July 31 letter denying the GE Request for Specific Exemptions. In a sense, this extension request is itself a request for a specific exemption from the Rule. Viewed in that context, under Section 50.12(a)(2)(v), there are special circumstances for such a temporary exemption. If its Petition for Reconsideration were denied, GE could have a line- or letter of credit in place within fifteen (15) days after receiving notification thereof.

No valid basis exists to deny this extension request. The SER concedes that GE "is one of the most financially stable companies in the United States" and "easily meets" the parent company guarantee financial test. As the licensee, GE is already obligated to assure that timely and safe decommissioning occurs. Surely nothing will take place within the brief period

required for the Commission to address this Petition for Reconsideration that will either (i) accelerate the time when GE must decommission its facilities at which NRC licensed activities are conducted or (ii) materially reduce GE's financial capacity to conduct such decommissioning. Therefore, there is no public interest served by compelling the licensee to irrevocably expend the funds necessary to implement a financial assurance instrument until after the Commission has ruled on this Petition.

D. CONCLUSION AND REQUEST FOR RELIEF

A careful reading of the SER which accompanied the letter denying GE's Request for Specific Exemptions has persuaded GE that the Staff did not grasp the thrust of GE's arguments presented in that Request. Rather than deal with the adequacy of the GE proposals to protect the public health and safety, the SER restates remarks in the Rule's Statements of Consideration which the GE Request had distinguished as inapplicable to GE's specific situation. GE believes that it was an appreciation of the fact that the legitimate goal of the Rule is adequate financial protection (rather than just more financial protection, even if redundant) which led Commissioner Curtiss to disapprove so strongly of the denial of GE's Request.

The Commission clearly has the legal authority to grant the relief requested by GE. Moreover, granting these specific exemptions to GE will present no undue risk to the public health

and safety, so that no policy reason exists to deny GE relief from the Rule. Manifestly, GE is currently able to provide reasonable assurance of decommissioning funding from its own resources and, by meeting on a continuing basis whatever reasonable financial test the Commission might establish for

self-guarantors, GE can provide such reasonable assurance into the future until decommissioning has been completed. Moreover, the evidence provided by the various means by which licensees have sought to comply with the financial assurance instrument requirement of the Rule demonstrates the unnecessarily burdensome and disparate impact which the Rule will have vis-a-vis GE, while yielding no tangible benefit to public health and safety.

Based on the foregoing, GE requests that the Commission (i) grant its Petition for Reconsideration of the denial of GE's Request for Specific Exemptions and (ii) grant to GE specific exemptions from the currently permitted list of financial assurance methods in Parts 50 and 70, thereby enabling GE to comply with the Rule by means of a self-guarantee coupled with an annually recertified financial test which satisfies or exceeds that applicable to parent company guarantees under the Rule.

GE further requests a temporary extension of time from the August 31, 1990 deadline for having in place the financial instruments currently required to establish assurance of funds for decommissioning under Parts 50 and 70, respectively. We ask that such an extension remain in force until fifteen (15) days after GE receives notification of the Commission's ruling on this Petition for Reconsideration, in order for GE to have time to implement the Commission's ruling.