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

July 30, 1990

OFFICE OF THE
SECRETARY

ACTION - Bernero, NMSS

Cys: Taylor
Sneizek
Thompson
Blaha
LBykoski, NMSS

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-90-217 - GENERAL ELECTRIC REQUEST FOR
SPECIFIC EXEMPTIONS UNDER 10 CFR PARTS 50 AND
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This is to advise you that the Commission (with Chairman Carr and
Commissioners Rogers and Remick approving and Commissioner
Curtiss disapproving) has agreed with the staff's recommendation
that the exemptions request be denied. Commissioner Curtiss
would have granted the exemptions, subject to the requirement
that GE be required to recerti   n an annual basis that it meets
the financ   est criteria as required by 10 CFR Part 30
Appendix /   ction II.A.1 and A.2.c. Commissioner Curtiss'
additional comments are attached.

Attachment:
As stated

cc: Chairman Carr
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
OGC
GPA

NOTE: THIS SRM, SUBJECT SECY PAPER, AND THE VOTE SHEETS OF
CHAIRMAN CARR, COMMISSIONERS ROGERS, AND CURTISS WILL BE
MADE PUBLICLY AVAILABLE IN 10 WORKING DAYS FROM THE DATE
OF THIS SRM

Commissioner Curtiss' comments on SECY-90-217:

I disapprove the staff's proposal to deny GE's request for an exemption from the regulations requiring licensees to establish external funds or use some other independent, external mechanism to ensure the availability of funds for decommissioning. Although I am aware of the fact that the Commission specifically considered and rejected rulemaking proposals that would have permitted the use of internal reserves or "self-insurance" for decommissioning funding, as GE proposes in its application for exemption, several considerations lead me to the conclusion that the concerns that the Commission had about internal reserves and self-insurance should not preclude GE from using such decommissioning funding methods here. In particular, I would note the following:

1. The NRC staff's consultant on methods to finance decommissioning has concluded that the use of internal reserves "is acceptable a'd provides excellent assurance of availability of funds." (NUREG/CR-3899 - Utility Financial Stability and the Availability of Funds for Decommissioning, September 1984, p. 13). Despite the fact that internal reserves cannot be effectively protected from creditors in the event of bankruptcy by the licensee, the NRC staff concluded that the inter al reserve approach provides reasonable assurance that decommissioning funds will be available when they are needed by licensees and recommended that the final decommissioning rules allow the use of internal reserves (SECY-87-309: Proposed Final Rules on Decommissioning, December 17, 1987, Appendix pp. 5-7, 8-13). The Commission's concern in rejecting that staff recommendation -- that a financially-troubled licensee might find it necessary to divert its decommissioning reserves to other purposes -- would not seem to apply to a licen.e that has exhibited the level of financial stability and assets of GE.

2. In promulgating decommissioning funding requirements in the low-level waste area, the Commission decided not to permit, on a generic basis, the "use of stand alone self-insurance" to fund low-level waste site stabilization and closure. At the same time, the Commission did indicate that it would evaluate the use of financial tests and self-insurance "proposed by licensees on a case-by-case basis." (Statements of Consideration: Licensing Requirements for Land Disposal of Low-Level Waste, 47 Fed.Reg. 57446, December 27, 1982). Thus, despite its lack of confidence that the self-insurance approach would provide the necessary reasonable assurance that all licens es would have site closure funds available when needed, the Commission held open the possibility that the self-insurance approach could be justified for licensees who

demonstrate their financial qualifications. In my
view, the logic of the approach taken for low-level
waste decommissioning applies with equal force here,
where GE has made just such a demonstration with regard
to the licenses which it holds.

3. While the decommissioning regulations do not allow the
    use of internal reserves or self-guarantees, they do
    permit non-licensee parent company guarantees where a
    parent organization meets certain financial tests set
    out in 10 CFR Part 30, Appendix A. GE's assets and
    financial qualifications far exceed those required to
    satisfy these financial tests for parent company
    guarantees. In fact, GE will satisfy the
    decommissioning funding requirements for a GE
    subsidiary, Reuter-Stokes, by providing a parent
    company guarantee based on GE's own internal financial
    capabilities. It would be an anomaly to permit GE to
    provide an internally-funded parent company guarantee
    for a subsidiary but require GE to establish external
    reserves to fund decommisioning where it itself is the
    named licensee.

4. Finally, it appears to me 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, an option
    that is explicitly allowed by the decommissioning
    rules. In fact, the very concerns that have been
    expressed about granting this type of exemption -- that
    a company might declare bankruptcy, thereby placing
    decommissioning funds at the risk of creditors'
    superior claims -- are no different than the situation
    that we would face under the option of a parent company
    guarantee. The Commission found that risk to be
    tolerable for a parent company guarantee; I see no
    reason to differentiate the situation here,
    particularly in view of the undisputed financial health
    of the applicant.

For the foregoing reasons, I would grant the exemption, subject
to the requirement that GE be required to recertify on an annual
basis that it meets the financial test criteria as required by 10
CFR Part 30, App. A, sections II.A.1 and A.2 C.