



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

SAFETY EVALUATION REPORT BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATED TO A REQUEST FOR EXEMPTION FROM
FINANCIAL ASSURANCE INSTRUMENT REQUIREMENTS
FOR CORNELL UNIVERSITY
DOCKET NOS. 50-97 AND 50-157

1. INTRODUCTION

By letter dated July 25, 1990, Cornell University requested an exemption from the decommissioning funding assurance requirements contained in 10 CFR 50.75(e)(2). Specifically, Cornell seeks to use a statement of intent as a financial assurance mechanism. As provided by 10 CFR 50.75(e)(2)(iv) only Federal, State or local government licensees may use statements of intent. Because Cornell is a private, non-governmental organization, it is not allowed by 10 CFR 50.75(e)(2) to use statements of intent.

2. BACKGROUND

When the decommissioning rule was published, the Commission specifically addressed the issue of whether well capitalized firmly established private organizations operating research and test reactors should be allowed to use statements of intent. In the preamble to the rule, the Commission noted,

"Private organizations were not afforded that option in the proposed rule. The different treatment arises because there is reasonable assurance that the appropriate government entity, which has the power of taxation, will provide adequate funding in the future to decommission the facility in a manner which protects public health whereas this is not necessarily the case with private organizations even if they are currently adequately capitalized." (53 FR 24018, at p. 24034, June 27, 1988).

More recently, the Commission addressed a similar request for exemption from the General Electric Company (GE). As described in SECY-90-217, June 19, 1990, GE wished to use a self-guarantee (which is analogous to a statement of intent) as a means of providing financial assurance for decommissioning its various facilities licensed under Parts 50 and 70. GE argued, in part, that its current financial resources make it "uniquely qualified to assure the Commission of the ready availability of funds for decommissioning." (SECY-90-217, p. 3). The Commission approved the staff's recommendation that GE's exemption request be denied.

3. ANALYSIS OF CORNELL'S JUSTIFICATION

Cornell has requested an exemption under the provisions of 10 CFR 50.12(a)(2)(ii) and (iii). Section 50.12 (a) states, "(a) The Commission may, upon applicat.

by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are - (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever -- (ii) Application 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; or (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; ..."

Cornell states that, under 10 CFR 50.12(a)(2)(ii), it is a non-profit educational institution chartered in 1865 with a large endowment and a long history of financial responsibility, and it is therefore not necessary to require any of the named methods to achieve the underlying purpose of the rule.

In view of the statements in the preamble and the Commission's decision with respect to GE's exemption request cited above, Cornell's justification under 10 CFR 50.12(a)(ii) is insufficient. GE has substantially more assets than, Cornell. Notwithstanding this, the Commission believes that an organization's current asset position or history of financial stability is not sufficient justification to allow use of any form of self-guarantee for future decommissioning costs.

Cornell also states that, under 10 CFR 50.12(a)(2)(iii), nearly all of the licensees for non-power research reactors similar to Cornell's that are required to submit a report under 10 CFR 50.33(k)(2) are Federal or State government licensees who by the terms of 10 CFR 50.75(e)(2)(iv) are not required to provide assurance by one of the three named methods but may use instead a statement of intent indicating that funds for decommissioning will be obtained when necessary. To require Cornell University to follow one of the three methods would impose costs significantly in excess of those incurred by the governmental licensees. They operate similar facilities in a similar manner for similar purposes.

We do not believe that Cornell has sufficiently justified its request for exemption under 10 CFR 50.12(a)(2)(iii). Cornell is correct in stating that most research reactor licensees, by virtue of being Federal or State government organizations, are able to use a statement of intent pursuant to 10 CFR 50.75(e)(2)(iv). However, it is not true that, by being unable to not use a statement of intent, Cornell would incur costs significantly in excess of those incurred by the governmental licensees. We note that Reed College, a private university licensed to operate a research reactor, has established a prepaid trust funded by assets from its endowment sufficient to meet estimated decommissioning costs. Because these assets were already in hand and because Reed College may use any earnings on those assets in excess of those needed to cover decommissioning cost escalation, the only expenses incurred by Reed College are nominal annual trust or escrow expenses. We estimate that these costs would be at most a few hundred dollars annually for any licensee. We also note that surety bonds generally cost 1%-2% of the amount guaranteed. This would be \$17,500 to \$35,000 annually and would decline as Cornell accumulated decommissioning funds.

4. CONCLUSION

The staff has considered the provisions for specific exemptions in 10 CFR 50.12 and, based on the information provided, identified no special circumstances or any other material circumstances that were not considered when the regulation was adopted. Application of the regulation to Cornell serves the underlying purpose of assuring that decommissioning funds are available for the decontamination and decommissioning of Cornell's research reactors. Thus, the staff has determined that Cornell has failed to demonstrate, under provisions of 10 CFR 50.12 an adequate basis to support its exemption request and, accordingly, denies the request.

Principal Contributors: Robert S. Wood
Theodore S. Michaels

Dated: