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RULEMAKING ISSUE

(NEGATIVE CONSENT)

August 12, 1991

SECY-91-252

For: The Commissioners

From: James M. Taylor, Executive Director for Operations

Subject: GENERAL ELECTRIC AND WESTINGHOUSE PETITION FOR RULEMAKING TO ALLOW SELF-GUARANTEE AS A VIABLE FINANCIAL ASSURANCE MECHANISM FOR COMPLYING WITH THE COMMISSION'S DECOMMISSIONING REQUIREMENTS

Purpose: To inform the Commission of the receipt of a petition for rulemaking to allow self-guarantee as a viable financial assurance mechanism for complying with the Commission's decommissioning requirements, filed jointly by the General Electric Company (GE) and the Westinghouse Electric Corporation (WE), and to provide the Commission with the staff's proposal for an expedited schedule for rulemaking.

Summary: This paper presents the staff's response to the Staff Requirements Memorandum (SRM) dated February 12, 1991 (Enclosure D) in which the Commission directed the staff to propose an expedited schedule for rulemaking with completion in 6 to 12 months, or earlier, should either General Electric or Westinghouse Corporation petition for rulemaking on this matter.

Background: In SECY-91-142, dated May 16, 1991, the staff informed the Commission that both GE and WE had indicated an intent to petition to the Nuclear Regulatory Commission (NRC) to allow self-guarantee as a viable financial assurance mechanism for

NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM IS ~~MADE~~ AVAILABLE

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compliance with the Commission's financial assurance requirements for decommissioning. The staff also presented in SECY-91-142 the results of an initial effort to determine the number of NRC licensees that might be able to comply with any self-guarantee criteria proposal, as directed by the SRM dated February 12, 1991. In anticipation of the GE/WE petition for rulemaking, the Office of Nuclear Regulatory Research obtained contractual support to assist the staff's expedited evaluation of the GE/WE petition.

Discussion: Notice of Petition for Rulemaking

On July 11, 1991, a joint petition for rulemaking submitted by GE and WE was docketed with the Commission (Enclosure A), requesting that the Commission amend its decommissioning criteria to allow the use of an alternate financial assurance method which the petitioners believe would provide the necessary assurance of the availability of funds for decommissioning at the time of decommissioning. A detailed summary of the petition is provided in the notice of receipt of petition for rulemaking (Enclosure B).

Also, as directed by the SRM dated February 12, 1991, the staff is soliciting public comment through the notice of receipt of petition for rulemaking. First, the staff is soliciting comment on what criteria, other than those suggested by GE and WE might be proposed for self-guarantee, and the basis for such criteria. Second, the staff is seeking comment as to the number or percentage of NRC licensees that might be able to comply with the self-guarantee criteria proposed by the petitioners.

Proposed Expedited Schedule

The staff's proposed expedited schedule is as follows:

Milestone	Completion Date
1. Publication of Notice in Federal Register	September 1991
2. Public Comment Period Ends	November 1991
3. Staff Analysis of Petition	December 1991

4. Final Staff Report, including analysis of public comments — February 1992

5. Proposed Rule to EDO — March 1992

Coordination: The Office of the General Counsel has no legal objection. The resources needed to evaluate comments on the General Electric Company and Westinghouse Electric Corporation petition and to conduct the rulemaking are included in the draft FY 1992-1996 Five-Year Plan (FYP).

Recommendation: That the Commission note:

The EDO plans to sign the notice of receipt of petition for rulemaking as set forth in the draft Federal Register notice (Enclosure B), and the statement approving the notice of receipt of a petition for rulemaking (Enclosure C) 10 working days from the date of this paper unless otherwise instructed by the Commission.

James M. Taylor
Executive Director
for Operations

Enclosures:
A. GE/WE Petition for Rulemaking
B. FR Notice of Petition for Rulemaking
C. EDO Statement Approving the Notice of Petition for Rulemaking
D. SRM dated February 12, 1991

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Tuesday, August 27, 1991, that the Commission, by negative consent, assents to the action proposed in this paper.

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Enclosure A

Joint Petition for Rulemaking from the General Electric Company and Westinghouse Electric Corporation

PRM-30-59

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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WRITER'S DIRECT LINE

June 25, 1991

RECEIVED
JUN 25 1991
Office of the Secretary

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

Attn: Chief, Docketing and Services Branch

Re: Joint Petition for Rulemaking from the General Electric Company and Westinghouse Electric Corporation

Dear Sirs:

On behalf of our client, the General Electric Company ("GE"), and pursuant to 10 C.F.R. 2.802, we submit herewith two (2) copies of a Petition for Rulemaking which is being filed jointly by GE and the Westinghouse Electric Corporation ("Westinghouse"). On March 7, 1991, NRC Executive Director for Operations, James M. Taylor, notified each of GE and Westinghouse that the Commission would not grant their requests for specific exemptions from the financial assurance requirements of the Commission's Decommissioning Rule. Mr. Taylor's letters invited GE and Westinghouse, if they wished to pursue the acceptability of self-guarantees as a method of assuring decommissioning funding, to submit a petition for rulemaking on the subject. The enclosed Petition for Rulemaking responds to that invitation.

As noted in the Petition (see fn. 2), GE and Westinghouse incorporate therein by reference their respective requests for specific exemptions, filed in March 1990, and their petitions for reconsideration of the denial of those requests, filed on August 20, 1990, as well as the NRC's responses thereto (dated July 31, 1990 and March 7, 1991, respectively, including the attachments thereto), and Commissioner Curtiss's dissent from the denial of the GE request for exemption.

The notifications of March 7, 1991, indicated that, if a rulemaking were requested, the Commission would conduct it on an expedited basis. On behalf of GE, we respectfully request such an expedited rulemaking, so that, if possible, a revised rule could be made effective by mid-March 1992. Such an expedited rulemaking would, assuming the revised rule proposed by the enclosed Petition were adopted, enable GE to avoid the additional expense of renewing the financial assurance mechanism it has provided to the Commission to comply with the current Decommissioning Rule.

Thank you for your prompt attention to this matter.

Sincerely yours,

Jay R. Kraemer

Jay R. Kraemer

Enclosure:
Petition for Rulemaking and Attachments/Annexes

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June 25, 1991

RECEIVED
JUN 25 1991
Office of the
Secretary

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

Attention: Chief, Docketing and Service Section

Re: Joint Petition for Rulemaking from the General Electric Company and Westinghouse Electric Corporation

Dear Sirs:

On behalf of our client, Westinghouse Electric Corporation ("Westinghouse"), and pursuant to 10 C.F.R. 2.802, we submit herewith two (2) copies of a Petition for Rulemaking which is being filed jointly by Westinghouse and the General Electric Company ("GE"). On March 7, 1991, NRC Executive Director for Operations, James M. Taylor, notified GE and Westinghouse that the Commission would not grant their requests for specific exemptions from the financial assurance requirements of the Commission's Decommissioning Rule. Mr. Taylor's letters invited GE and Westinghouse, if they wished to pursue the acceptability of self-guarantees as a method of assuring decommissioning funding, to submit a petition for rulemaking on the subject. The enclosed Petition for Rulemaking responds to that invitation.

As noted in the Petition (see fn.2), GE and Westinghouse incorporate therein by reference their respective requests for specific exemptions, filed in March 1990, and their petitions for reconsideration of the denial of those requests, filed on August 20, 1990, as well as the NRC's responses thereto (dated July 31, 1990 and March 7, 1991, respectively, including the attachments thereto), and Commissioner Curtiss's dissent from the denial of the GE request for exemption.

The notifications of March 7, 1991, indicated that, if a rulemaking were requested, the Commission would conduct it on an expedited basis. On behalf of Westinghouse, we respectfully request such an expedited rulemaking, so that, if possible, a revised rule could be made effective by mid-March 1992. Such an expedited rulemaking would, assuming the revised rule proposed by the enclosed Petition were adopted, enable Westinghouse to avoid the additional expense of renewing the financial assurance mechanism it has provided to the Commission to comply with the current Decommissioning Rule.

Thank you for your prompt attention to this matter.

Sincerely yours,

Barton Z. Cowan

Barton Z. Cowan

BZC:dtk

Enclosures:

Petition for Rulemaking w/Attachments

PETITION FOR RULEMAKING UNDER 10 C.F.R. 2.802

I. INTRODUCTION

General Electric Company ("General Electric" or "GE") and Westinghouse Electric Corporation ("Westinghouse"), collectively referred to herein as the Petitioners, hereby request that the Nuclear Regulatory Commission (the "Commission" or "NRC") exercise its rulemaking authority and promulgate a rule providing a means for self-guarantee of decommissioning funding costs by certain NRC licensees who meet stringent financial assurance and related reporting and oversight requirements. The Commission's current decommissioning rule[1] permits licensees to provide financial assurance of decommissioning funding through several mechanisms, including prepayment, establishment of a sinking fund, insurance, a line or letter of credit, and a parent company guarantee. The Petitioners propose that the NRC's Decommissioning Rule be revised to permit an additional means

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

of providing such assurance of decommissioning funding -- a self-guarantee for decommissioning costs by a licensee, other than an electric utility reactor licensee, that has no majority owner, is subject to the reporting requirements of the Securities Exchange Act of 1934 (the "Exchange Act"),[2/] and meets certain stringent financial criteria far in excess of those required by the Commission for a parent company guarantor.

A resume of the Petitioners' efforts to obtain NRC approval of self-guarantees provides the administrative context of this Petition for Rulemaking. In March of 1990, GE and Westinghouse, respectively, sought specific exemptions from the financial assurance instrument requirements of Parts 30, 40, 50 and 70 of the Decommissioning Rule.[3/] Under those requested exemptions, GE and Westinghouse would have been able to satisfy the subject financial assurance requirements in those Parts by submitting a self-guarantee that otherwise met or exceeded the criteria for qualifying parent company guarantees under 10 C.F.R. Part 30, Appendix A ("Appendix A"). On July 31, 1990, the Commission denied the requests for exemptions. On August 20, 1990, GE and Westinghouse each submitted a Petition for Reconsideration. On March 7, 1991, the NRC denied those

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2/ <u>See</u> 15 U.S.C. § 78 et seq. (1988).

3/ Note that the March 1990 GE specific exemption request addressed only Parts 50 and 70.

petitions. In the Commission's denial of the reconsideration petitions, it invited a petition for rulemaking to address the issues raised by GE and Westinghouse concerning self-guarantees for decommissioning funding. This Petition responds to that invitation.[4/]

II. PETITIONERS' GROUNDS FOR AND INTEREST IN THE RULEMAKING

GE and Westinghouse hold NRC and/or Agreement State licenses under Parts 30, 40, 50, 70, and 72 and, accordingly, have a direct interest in the revisions to the Rule that are proposed herein. Each of the Petitioners has resources that are more than adequate to provide the Commission, and (ultimately) the public, with the degree of financial assurance necessary to effectuate the declared aims of the Decommissioning Rule. Moreover, both GE and Westinghouse have a recognized standing in the financial community, earned over decades of successful operation, that further supports confidence that the Commission's objectives in establishing that Rule can be met through a self-guarantee by them and other licensees of similar financial substance.

4/ Petitioners incorporate herein by reference their Requests for Specific Exemptions and their Petitions for Reconsideration, as well as the NRC's responses thereto and Commissioner Curtiss's dissent from the denial of the GE request for exemptions.

GE and Westinghouse are, by the most exacting standards for measurement, in excellent financial condition; they possess vast assets, enjoy premier credit standing, and have long-lived records of prosperity. As of December 31, 1990, the end of its most recently completed fiscal year, GE had total assets (on a consolidated basis) in excess of $153 billion and total share owners' equity of nearly $21.7 billion. As of the end of its most recently completed fiscal year, Westinghouse had total assets (on a consolidated basis) of $22 billion and total share owners' equity of $3.9 billion. Very few banks or other financial institutions in the business of extending letters of credit or other forms of third-party guarantees can demonstrate financial capacity of such magnitude.

Under the Rule, companies like the Petitioners, which are of unquestionable financial strength and are capable of satisfying the most stringent measure of that strength, are unable to guarantee decommissioning funding costs when they themselves are NRC licensees. By contrast, less financially strong institutions (such as insurance companies, banks, and savings and loan associations) are not only permitted to guarantee the decommissioning funding costs of NRC licensees, but they are permitted to do so without evidencing to the NRC any degree of financial strength whatsoever. Moreover, and at the heart of this Petition, licensees' parent companies whose financial capacities pale in the face of those of the

Petitioners are nonetheless permitted by the Rule[5/] to provide qualifying "parent guarantees" solely because such parent companies are legal entities distinct from the subsidiary-licensees whose decommissioning funding they guarantee. Paradoxically, although GE is, and Westinghouse would be, able to provide a guarantee for subsidiary-licensees under the Rule, the Petitioners are nonetheless required to seek external decommissioning funding assurances because, in most instances, they themselves are the licensees.[6/] The anomalous nature of the Rule is thus readily apparent. What is proposed in this Petition is a means by which licensees like the Petitioners can provide a level of assurance of timely and adequate decommissioning funding that is at least the functional equivalent of that provided by the "parent-guarantee" mechanism.

The Petitioners show herein that it is reasonable to dispense with external methods of funding assurance when

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5/ Even without assuming that any particular parent company's guarantee will be accepted by the Commission, it is reasonable for the Petitioners to expect (and to base their assertions herein on such expectation) that a parent guarantee which meets all of the express requirements of the Rule will be so accepted.

6/ Commissioner Curtiss's dissent to the denial of the GE request for specific exemption recognizes that the current Rule, and its failure to provide for a self-guarantee for licensees like the Petitioners, has led to anomalous results. See Commissioner Curtiss's comments on SECY-90-217 (a copy of which is attached, at Annex A).

dealing with licensees of overwhelming financial stability. Licensees like the Petitioners simply do not present more than a remote risk[7] of near-term, unanticipated bankruptcy or other severe financial distress that might otherwise make reliance on a licensee's self-assurances less than reasonable.[8] By not allowing a self-guarantee in the limited circumstances advocated by the Petitioners, the existing Rule unnecessarily increases the cost to the Petitioners, and other similarly situated licensees, of achieving the Commission's stated objective in promulgating the Rule.

7/ The risk of near-term failure presented by licensees such as Petitioners, see infra notes 20, 27-32 and accompanying text, compares favorably, for example, with the projected risk of failure associated with letters of credit issued by banks. As calculated in a report recently prepared for the Commission Staff by an outside contractor, the failure rate of such bank letters of credit is estimated to be 0.5 percent. "Report on Analysis of Criteria for Self-Guarantee by NRC Licensees," ICF Incorporated (March 1991), NRC-02-91-001, at 27) [hereinafter, ICF Report]. Note that such letters of credit are an acceptable form of providing decommissioning funding assurances under the present Rule.

8/ As noted by Commissioner Curtiss, licensees of a financial strength such as the Petitioners do not seem to present the problem of diversion of decommissioning reserves to other purposes in the face of financial difficulties that apply to less financially secure licensees. See Commissioner Curtiss's comments, supra note 6.

General Electric and Westinghouse submit this Petition[9/] because they are affected adversely and unreasonably by the limitations in the Decommissioning Rule. The lack of an internal method of decommissioning funding assurance imposes unwarranted compliance costs upon them. In sum, the Petitioners currently are being affected adversely by the terms of the Rule due to the business form they have adopted to conduct licensed activities. The existing Rule compels GE and Westinghouse either to restructure their licensed activities into less financially secure licensee-subsidiaries (for which the Petitioners could then provide parent guarantees) or to obtain external assurances at a cost (in future years, literally hundreds of thousands of dollars annually in non-recoverable charges) that will be quite significant over the lives of their licensed activities.

For these reasons, GE and Westinghouse ask that the NRC recognize a new, appropriately limited category of

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9/ Since this is a Petition for Rulemaking, rather than a request for a specific exemption, the Petitioners need not demonstrate herein (as section 50.12 of the NRC regulations required in the exemption context) that they are adversely affected <u>vis-a-vis</u> their competitors in nuclear fuel fabrication or other businesses who have availed themselves of a no-cost method of providing financial assurances under the Rule -- a method that is unavailable to the Petitioners. In a rulemaking, it is enough to show that the Petitioners' proposal meets the Commission's declared goal of reasonable assurance of adequate funding for decommissioning by providing an equivalent degree of protection for public health and safety to that currently required by the Rule.

decommissioning funding assurance, which is described more fully below.

III. THE REMEDIAL RULE CHANGE ADVOCATED BY THE PETITIONERS

The Petitioners propose that the Commission amend Parts 30, 40, 50, 70 and 72 of its regulations to permit an additional method for providing the requisite financial assurance for decommissioning funding. In addition, the Petitioners propose that the Commission add a new "Appendix B" to Part 30 of the regulations, in which it would set forth the criteria for qualifying self-guarantors.

Specifically, the Petitioners submit that a rule should be promulgated to provide for the self-guarantee of funds for decommissioning costs by any licensee, except an electric utility reactor licensee, that (i) has no majority shareholder (that is, a company without a "parent"),[10/] (ii) is subject to the reporting requirements of the Exchange Act, and (iii) demonstrates a level of present and, to the extent predictable, future financial stability sufficient to meet the demanding financial test in proposed Appendix B.

10/ In Regulatory Guide 3.66, Item 5 of section 4.7.6, a parent company is described as the shareholder with majority control of the licensee's voting stock. The rule proposed by the Petitioners specifies that only licensees with no shareholder meeting that criterion could avail themselves of the new rule. This limitation is proposed because only such licensees would be structurally incapable of fulfilling the NRC's existing financial assurance requirements through a "parent" guarantee.

The Petitioners propose that the Commission amend Part 30 of its regulations by adding a new "Appendix B," setting forth the stringent financial test that must be met by licensees seeking to avail themselves of the self-guarantee method of providing decommissioning funding assurances. The financial test that the Petitioners urge the Commission to adopt for this "Appendix B" would require that the licensee meet all of the following standards:

(i) a current rating for its most recent bond issuance of AAA, AA or A as issued by Standard and Poor's Inc. ("S&P") or Aaa, Aa or A as issued by Moody's Investors Service ("Moody's");

(ii) tangible net worth of at least 10 times the current decommissioning cost estimate (or prescribed amount if a certification is used);

(iii) tangible net worth of at least $1 billion; and

(iv) assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the current decommissioning cost estimate (or prescribed amount if a certification is used).

The Petitioners further propose that, under "Appendix B", licensees be required to follow the procedures found in Sections II B, II C and (to the extent germane) III of Appendix A in the same manner as those sections are applicable to parent companies under the existing Rule.[11/] In addition, licensees using a self-guarantee would be required to forward promptly to both the NRC and the licensee's independent auditor all reports filed with the Securities and Exchange Commission (the "SEC"). Finally, in the event that the licensee's most recent bond issuance at any time ceased to be rated "A" or above by either Moody's or S&P, the licensee would be required to provide the NRC with notice of that fact within 20 days after the change was published by the relevant rating service.

11/ Section II B states that the company's independent certified public accountant must have compared the statistics used by the company in the financial test with the amounts reported on the company's independently audited, year-end financial statements for the most recent fiscal year. The licensee is required to inform the NRC within 90 days if that comparison reveals that the company no longer satisfies the financial test. Section II C states that the company must repeat its passage of the financial test within 90 days of the end of each fiscal year and that if at that time the company does not pass that test, the company must send the NRC notice that the company will provide alternative financial assurance within 120 days of the end of such fiscal year. Section III provides that the terms of a qualifying guarantee must include statements that the guarantee will remain in force unless cancelled, such cancellation to take effect 120 days after notice thereof to the NRC, and within 90 days of such notice, alternative financial assurance must be provided. Section III further provides that the financial test provisions remain in force until the NRC terminates a licensee's license and any trust established for decommissioning costs must be acceptable to the NRC.

IV. STATEMENT IN SUPPORT OF THE PETITION FOR RULEMAKING

A. Further Refinement of the Decommissioning Rule is Needed

Sanctioning a mechanism for self-guarantees is fully consistent with the fundamental objective of the decommissioning funding assurance requirement as stated in the Rule. The Rule was promulgated expressly in order to "provide 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 . . . ."[12/] The Petitioners submit that, if coupled with an appropriately demanding financial test and annual re-certification, a self-guarantee by a licensee can clearly provide "reasonable assurance" that such funds will be available.

The crux of the rationale for denial of the Petitioners' August 20, 1990 requests for reconsideration lay in the conclusion that a self-guarantee, like an internal reserve, did not provide the same degree of assurance of the timely availability of funding for decommissioning as would a parent company guarantee. This conclusion was, in turn, premised on the view, stated in the Staff's Safety Evaluation Report (SER) accompanying the March 7, 1991 denials, that "a parent company

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12/ 53 Fed. Reg. at 24033.

can isolate its assets from claims against assets of a subsidiary in bankruptcy" leaving the parent company "free from these claims and possessing assets to assure timely decommissioning of its subsidiary's facility."

Petitioners submit that whatever incremental assurance of decommissioning funding availability may be achieved by the NRC obtaining a separate, secondary parent guarantee can also be achieved by a licensee's self-guarantee when the licensee can show, through the very indicia relied on by the financial markets, that it is substantially less likely to face bankruptcy than is a parent guarantor qualifying under Appendix A. Put another way, the stricter financial test criteria proposed herein by the Petitioners more than offset those benefits described in the SER as deriving from the possible segregation of a parent company's assets in the event of a bankruptcy limited to its subsidiary-licensee. Thus, the proposal urged by the Petitioners will result in no reduction of the level of assurance of decommissioning funding compared to that achieved by the present Rule.

The Rule, as currently drafted, needs refining because financially stable and substantial NRC licensees without "parents" do not have any means to comply with the Rule other than prepayment, creating an external sinking fund or paying a third party to secure insurance or some other surety device, each of which is highly burdensome financially. Under the existing Rule, however, such licensees are able to provide guarantees for their subsidiaries that hold NRC licenses. If, as Petitioners believe, an adequate "early warning system" can be established to foreshadow a licensee's slide toward inability to meet its financial obligations, no reason would remain not to accept the assets of the licensee itself as the basis for decommissioning funding assurance for its own licenses. Once the reliability of such an "early warning" is recognized, a rule that uniformly rejects all forms of self-guarantees, but permits parent guarantees by less financially stable entities, is clearly arbitrarily discriminatory against qualifying licensees that elect not to reorganize their corporate structures to create a parent/licensee relationship.[13/]

Clearly, there is nothing inherent in a self-guarantee that makes it an inappropriate means of assuring financial responsibility for the future clean-up of contaminated

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13/ Such reorganizations are by no means simple or cost-free exercises to be lightly undertaken. They would disrupt existing chains of command and long-established customer relationships. In some instances, they might require the consent of lenders or customers (and such consents might be obtained only if commercial parent guarantees were given for the new subsidiary's obligations). At a minimum, such reorganizations would require parallel and duplicative structures (e.g., Boards of Directors, managers, reporting requirements) that would be inherently wasteful. We question, moreover, whether it is sound regulatory policy to provide encouragement for fractionating responsibility for the conduct of NRC-licensed activities.

facilities. The U.S. Environmental Protection Agency, from which the Rule's financial test standards for the parent company guarantee were borrowed, accepts the self-guarantee as a method of providing financial assurance of funding the closure of hazardous waste facilities.[14/] What is called for in refining the Rule is not the rejection of all self-guarantees, but the identification of the appropriate criteria for their use.

The existing Rule imposes costs upon licensees without parents that are significantly in excess of the costs incurred by licensees who are otherwise similarly situated, except that they do have a majority shareholder. As detailed in the August 1990 reconsideration petitions, various licensees, including certain competitors of GE and Westinghouse, met the decommissioning funding assurances requirement of the Rule either by obtaining guarantees from existing parents, which are of much less financial capacity than Petitioners, or by forming parents that could provide a guarantee at no expense to the licensee or its parent. In other cases, state governmental licensees provided the Commission with virtually no-cost assurances in the form of mere promises to obtain the funds when necessary. Meanwhile, those companies, such as the Petitioners, that, for significant and valid commercial

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14/ See 40 C.F.R. Parts 264 and 265. The Petitioners also note that even the Commission's own rules permit self-guarantees by licensees, through annual certified financial statements, of payments of deferred premiums which might become due under the Price-Anderson Act's nuclear liability regime. See 10 C.F.R. §140.21(e).

reasons, have not reorganized their corporate structures, incurred the cost of obtaining a line or letter of credit. The cost of satisfying the Rule through a line or letter of credit is significant to Petitioners -- especially when compared with other licensees who are able to satisfy the Rule through essentially no-cost methods. When the licensees required to incur such extra cost are manifestly capable of satisfying the objectives of the Decommissioning Rule through an annually re-certified self-guarantee, the unnecessarily disparate treatment resulting from the Rule is inconsistent with the public interest in cost-effective regulation.

The Petitioners also propose that the revision to the Rule be limited to licensees other than electric utility licensees under Part 50 of the Commission's regulations. Electric utilities licensed under Part 50 do not need the requested alternative to the present Rule. Under 10 C.F.R. § 50.75, electric utilities are permitted to build up their financial assurances for decommissioning over the life of the reactor, periodically placing such monies as are accumulated in an external sinking fund.[15/] Other (i.e., non-utility) Part 50

15/ This "step-wise" procedure available to electric utilities under § 50.75 was apparently recognized by the Commission as a basis for less diversity in the acceptable methods by which such a utility licensee could provide financial assurance for decommissioning, because the Rule does not permit electric utility reactor licensees to provide assurance through a parent company guarantee. See 10 C.F.R. § 50.75(e)(3).

licensees and all materials licensees must provide the full amount of financial assurance required for decommissioning from the commencement of operations (or from July 26/27, 1990 for pre-existing licenses). Thus, electric utility Part 50 licensees are not subjected to the same level of immediate financial burden under the Rule as are other licensees. Accordingly, relief from the strictures of the current Rule, in the form of the Petitioners' proposal, is not sought on behalf of Part 50 licensees who are electric utilities.

The modifications proposed by the Petitioners will remedy the current shortcomings of the Rule described above. In sum, the Rule should be revised because it imposes costs on Petitioners and other financially sound licensees that are not necessary to achieve the Commission's goal of reasonable assurance of the timely availability of adequate funds for decommissioning.

B. <u>NRC Concerns Respecting Self-Guarantees Will Be Satisfied by the Proposed Rule</u>

Commissioner Curtiss, in his strong disagreement with the Staff proposal to deny GE's exemption request, expressly recognized "that the concerns that the Commission had [during the original rulemaking] about internal reserves and self-insurance should not preclude GE from using such decommissioning funding methods here."[16/] He specifically explained that concern "that a financially-troubled licensee might find it necessary to divert its decommissioning reserves to other purposes . . . would not seem to apply to a licensee that has exhibited the level of financial stability and assets of GE."[17/] Commissioner Curtiss correctly saw as anomalous the fact that "GE's assets and financial qualifications far exceed those required to satisfy the Appendix A financial tests for parent company guarantees," but that it could not rely on those same assets to guarantee decommissioning under its own licenses. In sum, he concluded that, notwithstanding the concerns expressed by the Commission in 1988 about internal reserves, "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 . . . ."[18/] Commissioner Curtiss's comments are, if anything, even more compelling in the present context, where the Petitioners propose even higher financial standards for a self-guarantee than are required by the Rule for a parent company guarantee.

16/ Commissioner Curtiss's comments, *supra* note 6 (Annex A).

17/ *Id.*

18/ *Id.*

As noted above, when the Commission denied the exemption and reconsideration petitions submitted by General Electric and Westinghouse, the Staff expressed concern over potential bankruptcy of a self-guarantor licensee. The SER concluded that one protection against that eventuality (and, assertedly, a better protection than the licensee's own self-guarantee) is a guarantee issued by the licensee's parent that potentially is not responsible for the licensee's other debts. The instant Petition presents means by which a self-guarantee can be given by certain licensees that will be of at least equal reliability with a parent guarantee permitted by the Rule.

Congress has mandated that the NRC protect the public health and safety, and has given the Commission broad authority in that regard. In promulgating the Decommissioning Rule, the Commission found that the public health and safety could be protected best by requiring licensees to provide "reasonable assurance" that sufficient funds would be available to effect decommissioning in a manner that was both safe and timely.[19/] The rule revision proposed by the Petitioners meets that same regulatory objective.

The amendment to the Rule that GE and Westinghouse advocate provides, principally through the stringent financial criteria proposed in "Appendix B", more than just "reasonable

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19/ 53 Fed. Reg. 24033.

assurance" that timely and adequate decommissioning funding will be available. As discussed in detail below, the minimum bond rating required by proposed Appendix B -- "A" as issued by Moody's or S&P -- provides significantly greater protection than the minimum rating currently required by Appendix A. The tangible net worth requirement of the proposal is one hundred times that specified in Appendix A.[20/] Moreover, companies that could provide assurances through a self-guarantee would be required to have a tangible net worth that is ten times the estimated decommissioning costs (or prescribed level of certification) rather than six times such amounts, which is required by the Appendix A parent company guarantee financial test. The Petitioners' proposal would also require that companies forward to the Commission all periodic reports filed with the SEC.

The most compelling reason the proposed rule is justified and in the public interest lies in the bond rating requirement. Bond ratings are assigned by independent entities, such as Moody's or Standard & Poor's based on their evaluations of relative investment qualities of bonds and the

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20/ According to the ICF Report, the failure rates of manufacturing firms (such as the Petitioners) fall markedly as net worth rises above $10 million. ICF Report, *supra* note 7, at 6-8.

creditworthiness of their issuers.[21/] Bond rating systems were originated to provide investors with a method of assessing the relative investment qualities of bonds. However, Moody's also notes that bond ratings are used by bank regulators "to classify bonds in their bank examination procedure."[22/] Rating symbols are used by the rating services to indicate gradations of investment quality (i.e., reliability of payment of principal and interest obligations of the issuer). In broad terms, ratings ranging from "Aaa/AAA" to "Baa/BBB" as issued by Moody's and S&P, respectively, are considered to be "investment grade," while ratings ranging from "Ba/BB" to "C/C" are "speculative grade."

In assigning ratings, Moody's and S&P collect statistics and information about an issuer and its bond issuances, such information being provided by that issuer as well as being

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21/ See, e.g., Rating Bonds: A Few Notes on Who and How, Points of Interest, Vol. III, No. 3, (Spring 1991) (Dean Witter Publication) (both Moody's and Standard & Poor's rate bonds by looking "primarily at the overall financial health of the issuer, its repayment history, and what kind of collateral, if any, stands behind the bond").

22/ Moody's Corporate Bond Ratings. The first several pages of Moody's rating publications contain a key to Moody's rating system and investor services. That key includes the following topics: Moody's Corporate Bond Ratings; Key to Moody's Corporate Bond Ratings. See, e.g., Moody's Public Utility Manual, Vol. I, vii (1989); Moody's Transportation Manual x (1989). Citation in this Petition to information found in those topic sections shall be to Moody's Corporate Bond Ratings or to Key to Moody's Corporate Bond Ratings.

gathered by the rating services from other sources that those services consider reliable.[23/] The rating symbol ultimately accorded to an issuance reflects past, present and future risks. As explained by Moody's, "ratings involve judgments about the future . . . [but are also] used by investors as a means of protection . . . [therefore] the effort is made when assigning ratings to look at 'worst' potentialities in the 'visible' future, rather than solely at the past record and the status of the present."[24/]

An issuer's financial condition may change over time; therefore, the bond rating for any issuance is not static. Moody's describes the requirement for bond rating review and revision as follows:

> The quality of most bonds is not fixed and steady over a period of time, but tends to undergo change. For this reason changes in ratings occur so as to reflect these variations in the intrinsic position of individual bonds. A change in rating may thus occur at any time in the case of an individual issue. Such rating change should serve notice that Moody's observes some alteration in the investment risks of the bond or that the previous rating did not fully reflect the quality of the bond as now seen. While because of their very nature, changes are to be expected more frequently among bonds of lower ratings than among bonds of higher ratings, nevertheless the

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23/ *See* Standard & Poor's Bond Guide 10 (July 1989) [hereinafter Bond Guide].

24/ Moody's Corporate Bond Ratings, *supra* note 22.

> user of bond ratings should keep close and constant check on all ratings -- both high and low ratings -- thereby to be able to note promptly any signs of change in investment status which may occur.[25/]

Bond ratings may be suspended or withdrawn by a rating service, for example if "new and material circumstances arise, the effects of which preclude satisfactory analysis" or if available data are not sufficiently up to date to allow an opinion of investment quality to be formed.[26/] Thus, bond ratings are infinitely sensitive to a broad range of factors relating to an issuer and a particular debt issuance. In addition, statistics show that the rating systems work as predictive tools -- bonds holding ratings of "A" or better have an extremely low default rate over both short and long periods of time.

In a study published by Moody's on Corporate Bond Defaults and Default Rates[27/] from 1970 through 1990, it is reported that average one year default rates over that entire

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25/ Id.

26/ Id.

27/ Corporate Bond Defaults and Default Rates 1970-1990, Moody's Special Report (Jan. 1991) [hereinafter Moody's Report]. Relevant excerpts from the Moody's Report are attached (at Annex B) for the Commission's information and convenience. The Moody's Report used the actual or implied (i.e., adjusted) rating on each issuer's senior unsecured debt, intended to "yield an assessment of risk that is relatively unaffected by special considerations of collateral or of a subordinated position within the capitol structure." Id. at 7.

twenty-one-year period for bonds rated "A" or better are less than four one-hundredths of a percent (i.e., less than four in ten thousand).[28] Moreover, the Moody's Report also demonstrates that the incidence of any issuer rated "A" or better defaulting within six years following receipt of such an "A" or better rating is still less than one percent.[29] Those statistics attest to both the financial quality of issuers that are rated "A" or better and the integrity of the ratings system as a method of assessing the current and future creditworthiness of issuers. The "A" rating is assigned to bonds with a "strong capacity to pay interest and repay

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28/ See id. at 32, Table 2. These data reflect just three such defaults during the period studied. See note 36, below. The Moody's Report calculated one-year default rates based on the rating assigned to an issuer on January 1 and followed that rating through the calendar year. Moody's defines default very broadly to include

> any missed or delayed disbursement of interest and/or principal. This definition includes distressed exchanges where (i) the issuer offered bondholders a new security or package of securities containing a diminished financial obligation (such as preferred or common stock or debt with a lower coupon or par amount) and (ii) the exchange had the apparent purpose of helping the borrower avoid default....Moody's default definition also includes companies that make a delayed payment within the grace period provided in the indenture.

Id. at 6.

29/ See id. at 33, Table 4.

principal"[30/] and the Moody's Report clearly shows the accuracy with which such ratings have been assigned in the past.

In contrast, the average one year default rates since 1970 for issuers rated "Baa", which constitutes an acceptable rating for parent company guarantors, is more than four times higher than the average one year default rates for issuers rated "A" or better.[31/] Statistics in the Moody's Report also show that average cumulative default rates for issuers rated "Baa" are approximately 2 1/2 times greater than such default rates for issuers rated "A" or better six years after such ratings were issued; that three to five years following the issuance of such ratings, "Baa" rated issuers' average default rates are approximately 3 times such default rates for issuers rated "A" or better; and that in the second year following the issuance of such ratings, "Baa" rated issuers have average cumulative

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30/ Debt carrying a rating of "A" is described by S&P as follows:

> Debt rated 'A' has a strong capacity to pay interest and repay principal although it is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than debt in higher rated categories.

Bond Guide, supra note 23, at 10. Moody's defines "A" rated bonds in a similar fashion. See Key to Moody's Corporate Bond Ratings, supra note 22.

31/ See Moody's Report, supra note 27, at 32, Table 2.

default rates that are at least 5 times such default rates for issuers rated "A" or better.[32/]

It has been stated that the mortality rates for bonds rated BBB/Baa "begin to increase almost immediately after issuance,"[33/] and the statistics in Moody's Report bear that out -- from 1970 through 1990, fourteen issuers had a rating of "Baa" on the January 1st of the calendar year during which they defaulted.[34/] Such statistics are not surprising; bonds rated "Baa" constitute the lowest level of investment grade, and, indeed (unlike bonds rated "A"), have "speculative characteristics" according to Moody's.[35/]

32/ *See id.* at 33, Table 4.

33/ E. Altman, *Measuring Corporate Bond Mortality and Performance*, The Journal of Finance, vol. XLIV, no. 4, at 913 (Sept. 1989).

34/ Moody's Report, *supra* note 27, at 8, Figure 5.

35/ As explained in the Key to Moody's Corporate Bond Rating,

> [b]onds which are rated Baa are considered medium grade obligations, i.e., they are neither highly protected nor poorly secured. Interest payment and principal security appear adequate for the present but certain protective elements may be lacking or may be characteristically unreliable over any great length of time. Such bonds lack outstanding investment characteristics and in fact have speculative characteristics as well.

Key to Moody's Corporate Bond Ratings, *supra* note 22. S&P describes bonds rated BBB in a similar manner. *See* Bond Guide, *supra* note 23, at 10.

Statistical comparisons clearly demonstrate that a guarantee issued by a licensee holding an "A" bond rating provides substantially greater protection than a guarantee issued by a parent company holding a "Baa" bond rating. Thus, the ratings required in the rule revision proposed by the Petitioners provide the NRC with more than "reasonable assurance" of decommissioning funding, not only over the course of the year during which the annual certification required for a self-guarantee would operate, but also, in light of the very low long-term default rate of bonds rated "A" or better, for several years into the future. Moreover, the proposed rule offers further protection over the test for parent-guarantors because, under the proposed rule, the Commission would be promptly informed by the licensee of any change in its bond rating that removed a licensee using the self-guarantee from the "A" or better rating category as issued by <u>either</u> rating service.

The independent bond rating agencies are exceedingly vigilant, reviewing and/or revising the ratings of issuances as needed throughout the year to account for changes that affect the creditworthiness of the issuer. Their reputations, and therefore their livelihood, depend on the reliability of these ratings. As the Moody's Report shows, they have a very good record for predicting the approach of default. Thus, if the Commission adopts the proposed rule revisions, it can have a high level of assurance of ample warning of future financial difficulties of licensees using the self-guarantee and will be able to require a suitable alternative method for assurance of funding long before any such licensee might become unable to meet its financial obligations. Bonds with a rating of "A" or better virtually never go into default in the near term,[36/] nor do their issuers descend into bankruptcy without ample prior warning signs -- ample enough for the Commission <u>then</u> to require alternative means of financial assurance for decommissioning funding in future years.

Specific questions might be raised during the requested rulemaking about the large-scale and much publicized defaults of Texaco Inc. ("Texaco") and the Washington Public Power Supply System ("WPPSS"). The bond rating history of those well-known defaults, in fact, further supports the reliability of the rating system.

<u>36/</u> The Moody's Report indicates that in the entire twenty-one-year period covered, only three issuers defaulted within the calendar year at the beginning of which they held a rating of "A" or better. <u>See</u> Moody's Report, <u>supra</u> note 27, at 8, Figure 5. The default of DFC New Zealand and its subsidiary DFC New Zealand Overseas Investment (collectively, "DFC"), which held "Aa" ratings at the beginning of the year in which they defaulted, occurred as a result of the New Zealand Government's privatization of DFC. The default of Manville Corporation ("Manville"), which held an A rating at the time it defaulted, occurred when that company declared bankruptcy to avoid potentially vast liability resulting from asbestos poisoning litigation. The DFC and Manville defaults clearly represent highly unusual instances, and are consistent with the Petitioners' position that the proposed rule revision offers "reasonable assurance" of adequate and timely decommissioning funding.

Texaco originally commanded a "triple A" rating. That rating declined over a five-year period, ending in "default"[37/] (bond payments were deferred) as a result of litigation over its acquisition of Getty Oil. In January of 1984, Texaco acquired Getty Oil, taking on $9 billion of debt. Pennzoil Co. brought suit against Texaco for tortious interference with Pennzoil's allegedly pre-existing merger agreement with Getty Oil. In late 1985, Pennzoil won the suit and was awarded $10.53 billion in damages. In 1987, Texaco filed for bankruptcy protection under Chapter 11 and bonds issued by both Texaco and Getty Oil were in default. The following table documents the downrating, as issued by S&P, suffered by Texaco and its subsidiary, Getty Oil, over the course of that suit and its aftermath. Both issuers lost their "A" ratings more than a full year before the Texaco default.

37/ Texaco went into "default" because it deferred interest payments on its bonds. However, eventually both principal and interest were paid by Texaco on those obligations when Texaco emerged from bankruptcy.

DATE	TEXACO RATING	GETTY OIL RATING
Original Rating	AAA	AAA
1983	AA+	
Mar 84	AA-	AA-
May 85	A+	A+
Jul 85		NR
Dec 85	B	
Apr 87	D	

The WPPSS default on bonds issued for nuclear projects 4 and 5 involved a similar history of repeated downrating over a long period of time. The bonds issued for projects 4 and 5 were originally rated "A" by Moody's. Due to cost overruns and diminished demand for power, WPPSS debt issued on projects 4 and 5 experienced rating cuts over a two-year period. WPPSS debt issued on projects 4 and 5 ultimately went into default in July of 1983, when a Washington State court determined that the contracts funding the bonds' repayment obligations were unenforceable. The table below documents WPPSS rating cuts by Moody's. Again, a rating below "A" long pre-dated the bonds' default.

WASHINGTON PUBLIC POWER SUPPLY SYSTEM
(WPPSS)

DATE	RATING OF BONDS FOR PROJECTS 4 & 5
Original Rating	A1
Jun 81	Baa1
Jun 83	Caa

The history of the rating agencies' success in predicting the likelihood of default in any year, and their ability to keep pace with changing conditions, indicate that the judgments of the financial marketplace are a highly reliable predictor of an issuer's ability to meet its future financial obligations (even obligations many years into the future); they should be no less reliable as a predictor of a licensee's capacity to provide timely and adequate decommissioning funding.[38/] The rating agencies clearly are very adept at gauging changes in an issuer's creditworthiness. Thus, the bond rating requirement of the proposed rule provides a sound means for the NRC to be

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38/ Indeed, the rating agencies take an issuer's other financial obligations into account, including environmental cleanups and decommissioning responsibilities, when issuing and adjusting the ratings they publish.

assured of the future[39/] availability of decommissioning funding. In addition, the downrating notice requirement will assure that the NRC can monitor and gauge closely the value of a licensee's self-guarantee over time.[40/]

Under the proposed rule the NRC would also receive, on a timely basis, copies of periodic reports filed by the licensee under the Exchange Act. Notably, in addition to the licensee's audited annual reports, the Commission would receive the licensee's Quarterly Reports filed with the SEC on Form 10-Q ("10-Q") and Current Reports filed with the SEC on Form 8-K ("8-K"). The 10-Q must be submitted to the SEC within 45 days after the end of each of the issuer's first three fiscal quarters. The 10-Q contains, among other things, unaudited interim financial statements and a discussion of the

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39/ The licensee's current capability to provide decommissioning funding will be amply demonstrated by the other financial test criteria in proposed Appendix B, all of which are much more stringent than are required of a parent company guarantor.

40/ If the certification could not be provided at the end of the licensee's fiscal year, an alternative means of providing financial assurance of decommissioning would be required of the licensee. Moreover, since the licensee might still have an "investment grade" bond rating, there is no reason to expect it would then have difficulty in providing an alternative means of assurance. Again, by contrast, if a parent company holding the lowest bond rating accepted under the existing Rule experienced a downrating, that downrating necessarily would remove it from the "investment grade" rating category. As a result, the parent company could no longer give a parent guarantee and its subsidiary might well have a greater degree of difficulty obtaining a line or letter of credit.

registrant's financial condition, changes in financial condition and results of operations.[41] The discussion must be focused on "material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition."[42]

The 8-K must be filed within 15 days after the occurrence of an event that is required to be reported. Such events include changes in control, the acquisition or disposition of assets, bankruptcy or receivership proceedings, the resignation or dismissal of the certifying accountant (including information about any disagreement over accounting principles), and the resignation of a director if the director sent the registrant a letter describing a disagreement and the director requests that the matter be disclosed. In addition, the registrant may use Form 8-K to report any other material changes that it deems of importance to its shareholders. The general instructions to Form 8-K caution registrants to "have due regard for the accuracy, completeness and currency of the

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41/ The 10-Q also contains information about legal proceedings, changes in securities, defaults upon senior securities, matters submitted for shareholder vote, and other information, not reported on an 8-K, that the registrant is required to report.

42/ 17 C.F.R. § 229.303, Instructions to Paragraph 303(a) (1990).

information" previously reported to the SEC when considering whether to report events of material importance on Form 8-K.[43] Moreover, federal securities regulations require that no officer and director "make or cause to be made a materially false or misleading statement" on reports required by the federal securities laws.[44]

Through the receipt of those reports, the NRC would be apprised of significant events occurring during the course of the year. These reports would equip the NRC with another mechanism to monitor continuously the licensee's ability to satisfy its decommissioning funding obligations. Furthermore, these same reports are used by the bond rating agencies, who review their ratings in light of, <u>inter alia</u>, the information therein.

The stringent requirements of the financial test in proposed Appendix B -- the high bond rating coupled with a notification requirement should a company fall below the specified bond rating from either ratings service during the

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<u>43/</u> Exchange Act Release No. 26589 (Mar. 2, 1989).

<u>44/</u> 17 C.F.R. § 240.13b2-2 (1990). Investors rely on the reports a registrant files with the SEC when deciding whether to purchase or sell that registrant's securities. In this regard, the antifraud provisions of the federal securities laws prohibit misstatements of material facts and <u>omissions</u> of material facts if such facts make previous statements misleading in connection with the purchase or sale of securities. <u>See</u> 17 C.F.R. § 240.10b-5 (1990).

course of a fiscal year, and the forwarding of all periodic reports required under the federal securities laws -- operate to provide the NRC with assurance of decommissioning funding equal to or greater than the assurances already accepted by the NRC under the present Rule. The rule proposed by the Petitioners is sufficiently demanding to outweigh the concerns expressed in the SER over the lack of a separate guarantor entity with segregated financial resources. As noted above, the Moody's Report demonstrates that "Baa/BBB" issuers have a significantly greater likelihood of default within the course of a calendar year after being so rated than companies with "A" or better ratings have. Thus, parent companies that merely satisfy the "Baa/BBB" bond rating requirement in Appendix A clearly cannot provide better financial assurance, merely by virtue of their "separateness," than can qualified self-guarantors under proposed Appendix B.

Not only does the proposed rule adequately alleviate concerns over the lack of a separate entity as guarantor, but any possible risk caused by that lack of segregated financial resources is no different in kind or substance from the risk of a <u>parent</u> that supplied a guarantee for its subsidiary-licensee going bankrupt. A parent company could declare bankruptcy and put decommissioning funds at the risk of creditors' superior claims in the same manner a licensee could. Indeed, it is not at all unusual that, when a parent company enters bankruptcy, many (if not all) of its majority-owned subsidiaries likewise enter bankruptcy. In the case of wholly-owned subsidiaries, resort to bankruptcy simultaneous with the parent is even more frequent. In the words of Commissioner Curtiss, "the Commission found that risk to be tolerable for a parent company guarantee; I see no reason to differentiate the situation [of a self-guarantee], particularly in view of the undisputed financial health of [one of the Petitioners]."45/

Other concerns expressed by the NRC are equally inapposite in light of the stringency of the proposed rule revisions. When the Commission promulgated the Decommissioning Rule, it was concerned over the internal reserve method of providing funding assurances.46/ The Staff raised those issues again when the NRC rejected the exemption and reconsideration petitions submitted by GE and Westinghouse. However, the rule revisions proposed by the Petitioners do not involve the same issues that concerned the NRC when it rejected the internal reserve method in the original Rule. The internal reserve was rejected, at least in large part, in light of the financial risks taken, and financial difficulties experienced, by utilities. The proposed rule revisions to Part 50 do not cover

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45/ Commissioner Curtiss's comments, *supra* note 6 (Annex A).

46/ *See* 53 Fed. Reg. 24032-33.

electric utility licensees. Moreover, the NRC did not consider whether a self-guarantee or internal reserve would have been adequate _if_ the licensee had (and demonstrated annually) the financial strength required by some test more demanding than that for a parent company guarantor. The proposed rule revisions are supported by empirical evidence that demonstrate such adequacy.

Moreover, the NRC now has information about the financial capabilities of its licensees that was unavailable at the time the Decommissioning Rule was adopted.[47/] This information demonstrates that the number of licensees who could qualify to give a self-guarantee under the proposed rule is relatively small,[48/] meaning that the administrative burden on the NRC staff of monitoring continuing fulfillment of the financial criteria would likewise be quite modest. The Commission no longer faces uncertainty about a licensee's ability to provide decommissioning funding assurances, and licensees capable of satisfying the proposed rule have financial strengths far in excess of companies from which the NRC has stated that it will accept parent company guarantees. The Commission should also

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47/ SECY-91-142 (May 16, 1991); ICF Report, _supra_ note 7.

48/ Using the information in the ICF Report, it seems very likely that fewer than 100 NRC licensees would qualify as self-guarantors under the proposed rule revision.

note that, because the proposed rule revisions require a company to be subject to the Exchange Act and to forward to the NRC copies of all SEC filings made by that company, the NRC would receive financial information on a timely basis that it was not assured of receiving at all when it rejected an internal reserve method of assurance. Finally, as explained in previous petitions, the self-guarantee of the proposed rule is different from, and more demanding than, an internal reserve because of the annual re-certification requirement.

C. The Rule Requested By the Petitioners Is in the Public Interest

The proposed rule encourages direct licensee responsibility by financially strong companies rather than by structural artifices possibly conjured up to meet the letter of the Rule's parent company guarantee requirements. As discussed in previous petitions, the failure of the current Rule to allow for self-guarantees by financially strong, independent (i.e., non-subsidiary) companies may discourage such companies from becoming licensees, due to the additional cost of the available decommissioning funding assurances methods if they become licensees. The current Rule thereby appears to provide such companies with an incentive to create less financially secure subsidiaries to hold NRC licenses. Quite the contrary, consolidation of financial resources in a single licensed organization is in the public interest because the performance of all licensee responsibilities is thereby enhanced.

The proposed rule further promotes the public interest by allowing licensees without parents to conserve valuable resources by executing a self-guarantee rather than expending increasing amounts of money for a letter or line of credit (the cumulative cost of which, during the next 40 years, is estimated to be in excess of several million dollars for each of the Petitioners). Funds expended on a letter or line of credit are unrecoverable and, although it is expected that each of the Petitioners will continue to be financially strong throughout this period, the expenditure of such funds is unwarranted. It cannot be in the best interest of the public to have such large amounts devoted to the Petitioners' providing funding assurance when a self-guarantee provides the NRC with more than adequate decommissioning funding assurance.

V. CONCLUSION

The relief sought by GE and Westinghouse in this Petition is the promulgation of a revised rule providing for decommissioning funding assurances through the execution of self-guarantees by certain NRC licensees under 10 C.F.R. Parts 30, 40, 50, 70 and 72, subject to their satisfying strict financial criteria. The Petitioners have attached a copy of such a rule revision as Exhibit A.

In this Petition, GE and Westinghouse have shown that, should the Commission adopt the proposed rule revision, concerns over the absence of a segregated fund source or the risks of an internal reserve would be more than overcome by the creditworthiness of the qualifying licensee/obligor. This creditworthiness, after all, goes to the heart of the level of assurance that timely and adequate decommissioning funding will be provided. A licensee who can meet all the tests established by the proposed revised rule must -- by virtue of meeting those demanding criteria -- more than satisfy the standard of "reasonable assurance." Accordingly, and because to do so would further the Commission's statutory mandate and better serve the overall public interest, the Petitioners urge the Commission to adopt the attached rule revision.

0457w/0463w

EXHIBIT A

ATTACHMENT TO PETITION FOR RULEMAKING

Proposed Rule

1. Section 30.35(f)(2) is amended to read as follows:

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B to this part. A guarantee by the applicant or licensee may not be used (1) in combination with any other financial methods to satisfy the requirements of this section or (2) in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions . . .

2. A new Appendix B is added to Part 30 to read as follows:

Appendix B -- Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes a financial test. This appendix establishes criteria for passing the financial test for the self guarantee.

II. Financial Test

A. To pass the financial test, the company must meet all of the following criteria:

The company must have:

(i) A current rating for its most recent bond issuance of AAA, AA, or A, as issued by Standard Poor's or Aaa, Aa, or A, as issued by Moody's; and

(ii) Tangible net worth at least ten times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

(iii) Tangible net worth of at least $1 billion; and

(iv) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the current decommissioning cost estimates (or prescribed amount if certification is used).

B. The company's independent certified public accountant must have compared the data used by the company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform NRC within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

C. The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.

D. 1. After the initial financial test, the company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

2. If the company no longer meets the requirements of paragraph A of this section, the licensee must send notice to the Commission of intent to establish alternate financial assurance as specified in the Commission's regulations. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Company Guarantee

The terms of a self guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Commission. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Commission, as evidenced by the return receipt.

B. The licensee will provide alternate financial assurance as specified in the Commission's regulations within 90 days after receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put into effect by the licensee.

D. The licensee will promptly forward to the Commission and the licensee's independent auditor all reports filed by the licensee (in its capacity as a registrant) with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities Exchange Act of 1934.

E. If at any time the licensee's most recent bond issuance ceases to be rated in any category of A or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service.

3. Section 40.36(e)(2) is amended to read as follows:

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B of 10 CFR Part 30. A guarantee by the applicant or licensee may not be used (1) in combination with any other financial methods to satisfy the requirements of this section or (2) in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions . . .

4. Section 50.75(e)(1)(iii) is amended to read as follows:

(iii) A surety method, insurance or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of . . .

5. Section 50.75(e)(2)(iii) is amended to read as follows:

(iii) A surety method, insurance, or other guarantee method. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B of 10 CFR Part 30. A guarantee by the applicant or licensee may not be used (1) in combination with any other financial methods to satisfy the requirements of this section or (2) in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

6. Section 70.25(f)(2) is amended to read as follows:

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B of 10 CFR Part 30. A guarantee by the applicant or licensee may not be used (1) in combination with any other financial methods to satisfy the requirements of this section or (2) in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions . . .

7. Section 72.18(c)(2) is amended to read as follows:

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B of 10 CFR Part 30. A guarantee by the applicant or licensee may not be used (1) in combination with any other financial methods to satisfy the requirements of this section or (2) in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions . . .

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 and 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 internal 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 licensee 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 <u>all</u> licensees 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 GE 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.

January 1991

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Corporate Bond Defaults and Default Rates

1970-1990

Summary

This study brings previous Moody's studies of corporate bond defaults current through 1990. The purpose of these studies is twofold. First, the data are intended to provide bond market investors with bench mark guidelines on historical default experience by rating category. Second, they aid in assessing the credit support needed for structured securities backed by pools of corporate bonds.

Briefly, the study found:

- In 1990, 96 corporate issuers defaulted on $22.0 billion of Moody's-rated and public corporate debt. Of this total, 78 issuers were rated by Moody's -- all were rated speculative grade as of January 1, 1990. These companies had $20.4 billion of debt outstanding at default.
- The default rate for speculative grade issuers rose to 8.8% from 1989's 5.6%. These represent the highest back-to-back default rates on record.
- Average default rates across investment horizons spanning one to twenty years clearly show that default rates for lower-rated issuers exceed those of high-grade issuers.
- Defaults reached across many industries, with casinos & hotels, retail, and airlines particularly hard hit.
- Many ill-conceived LBOs came apart in 1990. The year also saw an increase in the use of distressed exchange offers and grace period payment delays to extract concessions from bondholders.

In view of the current recession and Middle East conflict, Moody's anticipates a continued high pace of defaults for 1991. Through the first three weeks of 1991, 11 firms have defaulted on $2.9 billion of public or Moody's-rated bonds. As further evidence of potential difficulties, Moody's reports that Caa outstandings grew by 23% in 1990 to $27 billion, three times the level at the beginning of 1989.

CONTENTS

Discussion of Recent Default Experience

Major Defaults of 1990

In 1990, 96 corporate issuers -- 78 of them rated by Moody's -- defaulted on $22.0 billion of long-term debt. The year saw the largest number and highest dollar volume of defaults since Moody's began tracking default statistics in 1970. Of all speculative-grade issuers at the start of 1990, 8.8% had defaulted by year end, up from 1989's 5.6%, the highest back-to-back default rates on record.

Figure 1

Defaults and Distressed Exchanges on Long-Term Debt in 1990 (in $millions)	
Straight	20,495.4
Convertible	1,524.1
Total	22,019.5

Two Campeau companies, Allied Stores and Federated Department Stores, accounted for the largest default on public debt in 1990: $2.7 billion. Allied was purchased by Campeau in 1986 for $3.5 billion; Federated was purchased in 1988 for $6.7 billion. But operating profits were not strong enough to pay down bank debt as well as make interest payments to subordinated bondholders. Nor could asset sales fetch the prices needed to reduce the huge debt burden. A lackluster retail environment and mounting liquidity problems ultimately led to the bankruptcy filing in January 1990.

Other major defaults, in descending order of dollar amount of public debt affected:

- Southland Corporation, owner of the 7-Eleven convenience store chain, defaulted on $1.763 billion;
- USG Corporation, a building materials manufacturer, defaulted on $1.561 billion;
- Continental Airlines and its parent, Continental Airlines Holdings, Inc.-- formerly Texas Air Corporation -- defaulted on $1.204 billion;
- Interco, Inc, a St. Louis-based footwear and furniture maker, defaulted on $1.155 billion;
- Trump Taj Mahal Funding, Inc. and Trump Castle Funding, Inc., the financial conduits of two Atlantic City casino/hotels, together defaulted on $1.027 billion;
- National Gypsum Company, the second-largest U.S. gypsum producer, defaulted on $1.024 billion.

All other 1990 issuer defaults each affected less than $1 billion. Table 1 lists 1990's defaulting companies, giving business descriptions, descriptions of public debt issues outstanding, relevant dates, and a short summary of factors leading to default.

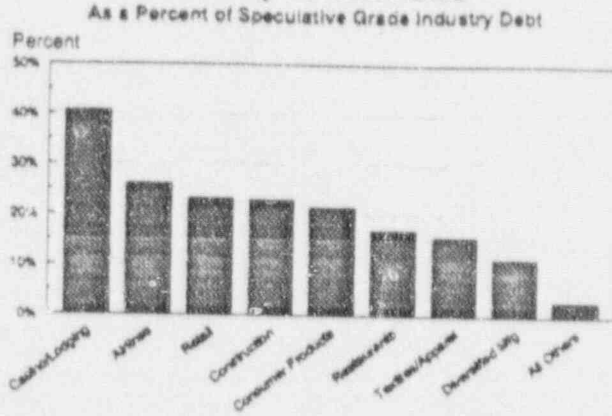
Some Industries Particularly Hard Hit in 1990

When 1990 defaults are grouped by industry, some clear patterns of risk emerge (Figure 2). The clearest example is the casino/lodging industry where ten speculative-grade companies defaulted, including two Trump-related companies with $1 billion of debt between them. Defaulters account for 40.6% of all speculative-grade debt in this industry and had $2.5 billion of public debt outstanding; that was about 11.1% of the dollar volume of 1990's defaults (Figure 3). The casino industry saw rapid deterioration in credit strength in 1990. Gaming revenue slowed dramatically, just as new capacity came on line, hurting Trump and Bally in the Atlantic City market. Similar conditions contributed to troubles in Divi Hotels' Caribbean market and Goldriver's Nevada property. The hotel industry's troubles have been much publicized also. It was badly overbuilt in the 1980s, which left it vulnerable to loss of business due to reductions in corporate travel.

Figure 2

Industry Default Rates

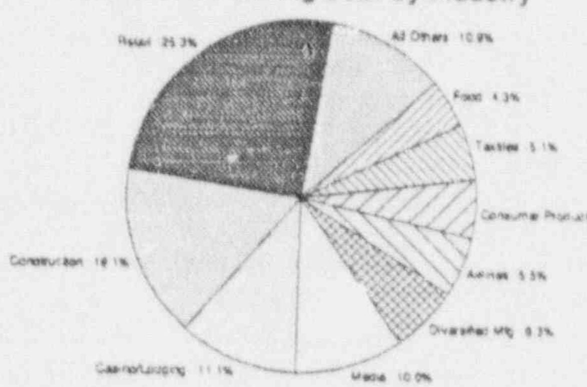
As a Percent of Speculative Grade Industry Debt



Eight issuers in the retail industry defaulted on \$5.6 billion of public debt, representing 25.3% of all defaulting corporate debt in 1990. Department stores and apparel specialty stores have been and will continue to be highly susceptible to failure. Federated and Allied, among the largest defaults in 1990, completed leveraged buyouts only to face liquidity problems. Convenience food retailers such as Southland and Circle K, with historically more stable cash flows, were also capsized by overwhelming debt. Excessive prices paid in these and other LBOs resulted in overleverage. Severely limited financial flexibility forced cuts in capital spending, thus thwarting efforts to improve store productivity and raise future operating profits.

Figure 3

Share of Defaulting Debt by Industry



Slack demand and higher oil prices in the wake of Iraq's invasion of Kuwait contributed to Continental Airlines' (and its holding company's) default on \$1.2 billion of debt, which was 5.5% of the dollar defaults in this study. Continental's default affected 26.?% of speculative-grade airline industry debt. The Gulf war will continue to tax the airline industry on into 1991. Already in January 1991 Pan Am had filed for protection under Chapter 11 of the bankruptcy code, and Eastern Airlines, which had been under court protection, was shut down. Other airlines could follow.

Softening real estate prices, on the heels of rapid price appreciation throughout most of the 1980s, caused problems for many industries in 1990, particularly construction. During the year, the 15 defaulting issuers in the construction industry -- mainly residential construction and building products firms -- had \$3.5 billion worth of bonds outstanding at time of default, affecting 16.1% of total dollar defaults.[1] Following major financial restructurings within the past few years, two gypsum producers, USG

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[1] Major commercial contractors were not a factor, as they generally do not issue public debt, relying instead on bank and insurance company loans.

and National Gypsum, each had more than $1 billion debt outstanding at default. Based on average 1990 industry debt levels, 22.9% of speculative-grade construction industry debt was in default during 1990.

Major sectors plagued by problems during the 1980s, but not significant contributors to 1990 defaults, were the oil industry and financial institutions. Many weak oil-related firms failed after the dramatic oil price decline of late 1985, leaving only the healthiest firms. Those that survived the earlier shake-out were less prone to fail this time around. Moreover, the sharp rally in oil prices following Iraq's invasion of Kuwait should help some firms in the industry.

Depository institutions, including thrifts, were not a major contributor in dollar terms to 1990 defaults for a different reason. Despite their widely reported difficulties, few of the smaller institutions have publicly-held debt, preferring instead to rely on federally-insured deposits for their funding needs. Out of some $15 billion in Moody's-rated long-term depository institution debt, only $410 million defaulted during 1990. However, depository institutions did account for over 10% of defaults in terms of the number of rated issuers. Junk bond holdings played a part in this statistic. Noteworthy defaults included Centrust Savings, the Miami thrift that lived and died by the junk bond. In addition, new thrift investment restrictions and the subsequent decline in the junk bond market contributed to the seizures of Far West Savings, Columbia Savings and Imperial Corporation. The distressed exchange offer by the One Bancorp of Maine, however, is more indicative of the wider problems facing depository institutions: overbuilt real estate markets in a slowing economy. The recent failure of the Bank of New England and the unexpectedly high year-end provisions at many banks and thrifts indicate that deflation in the nation's real estate markets has yet to abate. Continued real estate woes, as well as the need to meet increasingly stringent capital requirements, will continue to stress financial institutions in the U.S. throughout 1991. Default risk, especially among bank and thrift holding companies, will continue to rise as regulators focus their efforts on protecting both insured depositors and the federal deposit insurance funds.

Other Aspects of 1990 Defaults

Interestingly, eight years after Manville's surprise voluntary bankruptcy filing in response to asbestos-related litigation, asbestos continues to figure in default numbers. It played a minor part in National Gypsum's troubles and it was at least a factor in USG's restructuring strategies. But it played its most direct role with the January 1991 bankruptcy filing of Eagle-Picher Industries, where a controversial class-action settlement covering current and future asbestos-related claims was superseded by the company's inability to cover required January and February asbestos claim payments.

The single most common thread in the pattern of 1990 defaults was a prior leveraged refinancing or LBO done during the 1980s. In fact, some form of debt recapitalization provides at least a partial explanation for over a fifth of all 1990 defaults. The transformation from a publicly-controlled corporation to private control saddled these firms with debt obligations that ultimately proved destructive. In the heyday of LBO activity, companies rated investment grade could overnight become single-B issuers with much higher default prospects. Such transformations were nearly always unforeseeable by investors holding surviving pre-LBO debt, even taking into account such covenant protections against recapitalization as might exist in loan indentures. However, the recent dramatic decline in investor interest in highly leveraged financings, coupled with the eclipse for now of the new-issue junk bond market, reduces the risk of unexpected changes in an issuer's financial structure.

The success of many LBOs completed during the latter part of the 1980s depended crucially upon subsequent sales of assets at relatively high prices. But in many cases, markets refused to cooperate with such expectations and subsequent sales either did not materialize or occurred at much lower prices than deals required.

Moreover, planned asset sales which were abandoned or delayed could trace their difficulties to banks' reluctance to extend financing in the face of tightening regulatory pressure. Finally, in a number of leveraged financings -- Southland, Allied, and Federated Department Stores come to mind -- clearly the buyout team overpaid for the operating assets.

Methodology

Definition of Default

Moody's defines default as any missed or delayed disbursement of interest and/or principal. This definition includes distressed exchanges where (i) the issuer offered bondholders a new security or package of securities containing a diminished financial obligation (such as preferred or common stock or debt with a lower coupon or par amount) and (ii) the exchange had the apparent purpose of helping the borrower avoid default.

There were at least 21 distressed exchange offers or other efforts to extract concessions from bondholders during 1990, up from at least 15 in 1989. In many cases, defaulting companies, such as Interco, offered equity securities in exchange for debt. Others, such as Western Union, offered bondholders a cash tender for something less than the full face value of the debt.

Moody's default definition also includes companies that make a delayed payment within the grace period provided in the indenture. In 1990 at least seven issuers missed an interest payment on the scheduled payment date only to make the contractual payment within the "grace period" of the bond indenture. For instance, MGM-Pathe waited 27 days past the payment date to pay interest due on $400 million of its public debt. Although payment was made within the grace period (that is, prior to the trigger date that would permit bondholders to accelerate the due date for principal repayment), Moody's included the company as a defaulter. Our rationale is straightforward, that a contractual payment obligation was not made when due. The delay amounted to an involuntary 27-day loan to MGM-Pathe, a clear abuse of bondholders' legitimate expectations as to payment. Moreover, several defaulters in 1990 appeared to use grace period delay as a strategic club with which to beat bondholders, possibly with a debt restructuring in mind.

Moody's Rating Database

The default rates and other figures cited in this report are calculated using Moody's proprietary database of public long-term debt ratings on U.S. and non-U.S. industrial companies, utilities, financial institutions, sovereign issuers, and structured finance entities. Municipal debt issuers were excluded, as were issuers with short-term debt ratings only. In total, our database includes more than 4,000 issuers that met the criteria during the 21-year period studied. At the beginning of 1990, the database contained the ratings for 3,046 companies. These issuers account for a large part of the outstanding dollar amount of U.S. public long-term corporate debt. Moody's database also tracks defaults and distressed exchanges. The date of default used in the study is the earliest announcement of intent to default, distribution of a distressed exchange offer, failure to pay interest or principal when due, or a filing for bankruptcy.

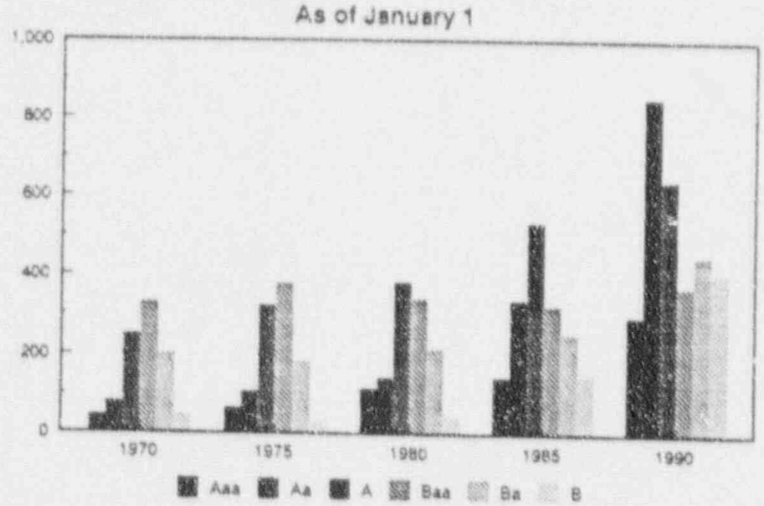
Rating statistics reported in the first part of this study are based on the number of debt issuers that default rather than on par amount of defaulted debt and are limited to one count for each legal entity. Separately tabulating multiple issues of a single issuer would bias the results toward the default characteristics of issuers with multiple issues. Different issuers within an affiliated group of companies were counted separately because not all subsidiaries have cross-default provisions nor are affiliated companies always rated the same.

A Moody's rating is an opinion as to both default likelihood and severity of loss in the event of default. For purposes of this study, in which ratings are used to indicate default probability, we have tried to back severity considerations out of the rating. That is done by taking the rating on each company's senior unsecured debt or, if there is none, implying such a rating and using it as a proxy for default probability. In most cases, this will yield an assessment of risk that is relatively unaffected by special considerations of collateral or of a subordinated position within the capital structure. A breakdown of issuers by implied senior unsecured rating for selected years is shown in Figure 4. [Rapid growth in Moody's structured finance business, as opposed to improving corporate credit quality, accounts for the jump in the number of Aaa- and Aa-rated issuers between 1985 and 1990.]

Figure 4

Number of Rated Issuers

As of January 1



Moody's compiled the default histories used in this study from a variety of sources, including our own library of financial reports, press releases, press clippings, internal memorandums, and records of analyst contact with rated issuers. Moody's also examined documents from the Securities and Exchange Commission, Dun & Bradstreet, the New York Stock Exchange, and the American Stock Exchange.

Corporate Default Rates

Major Defaults and Historical Ratings

From 1970 through year-end 1990, 355 rated issuers defaulted on their debt; six issuers defaulted twice.[2] All of the issuers except one -- Manville Corporation, which was rated A -- had actual or implied speculative-grade ratings at the senior unsecured

[2] The six two-time defaulters were Continental Airlines Corp. ('83 & '90); Digicon, Inc.('86 & '90); Harvard Industries, Inc ('72 & '90); Texas International Company ('85 & '88); United Merchants and Manufacturers, Inc. ('77 & '90); and Western Union ('87 & '90). Moreover, Continental Airlines defaulted twice on the same issue (3-1/2% Convertible Subordinated Debentures due 1992).

debt level at the time of default.[3] As expected, when one traces a defaulted bond back in time, one encounters a number of investment grade ratings on future defaulters. Figure 5 traces the rating history of defaulting issuers from one to 20 years prior to default. It shows, for example, that at default, no issuer was rated Baa. But moving back in time to January 1 of the calendar year in which they defaulted, 14 issuers were rated Baa.

At the start of the second year before default, 28 issuers were rated Baa, and so forth. As mentioned above, only one issuer was rated investment grade at default; 17 issuers were rated investment grade on January 1 of the year they defaulted; 36 were rated investment grade at the start of the second year before default, and so on. The ratings of six defaulting issuers were withdrawn before they defaulted.

Still looking at Figure 5, the company with the Aaa rating as of the fourth January prior to default was Getty Oil, a subsidiary of Texaco. The default of Texaco and its affiliates stemmed from the parent's litigation with Penzoil over the purchase of Getty Oil. As of the fifth January prior to default, both Texaco and Getty Oil were rated Aaa. Texaco and Federated Department Stores were the two companies with Aaa ratings between six and 15 years prior to default. As previously mentioned, Manville Corporation was the sole issuer with an A rating at default.

Figure 5
Rating History of 350 Defaulting Issuers

		Rating at Default	Calendar Years Prior to Default 1	2	3	4	5	10	15	20
Invest. Grade	Aaa	0	0	0	0	1	2	2	2	1
	Aa	0	2	2	4	7	6	0	1	2
	A	1	1	6	15	12	10	13	5	4
	Baa	0	14	28	30	33	28	30	24	13
Spec. Grade	Ba	39	97	138	119	102	94	47	26	23
	B	215	197	134	98	67	49	19	17	7
	Cs	95	39	15	11	11	10	8	7	3

Usefulness of Default Rates

Figure 6 shows the annual number of rated issuer defaults for the period 1970 through 1990. While these figures are of interest to some observers, they don't answer the often asked question "What is the likelihood of default on a portfolio of corporate bonds?" Default rates have been constructed with this question in mind. They are typically based on the experience of the entire corporate bond market and are most useful to investors who hold portfolios which imitate the behavior of the overall corporate bond market. But they can equally serve small investors by acting as indicators of market stress.

The default rates presented in the following tables are calculated with the issuer as the unit of study, rather than on the more commonly-used basis of outstanding dollar amounts. The denominator used for Moody's issuer default rates consists of the number of rated issuers -- a calculation Moody's makes with a high degree of confidence. Equal weight is placed on large and small issuers, since the number of rating

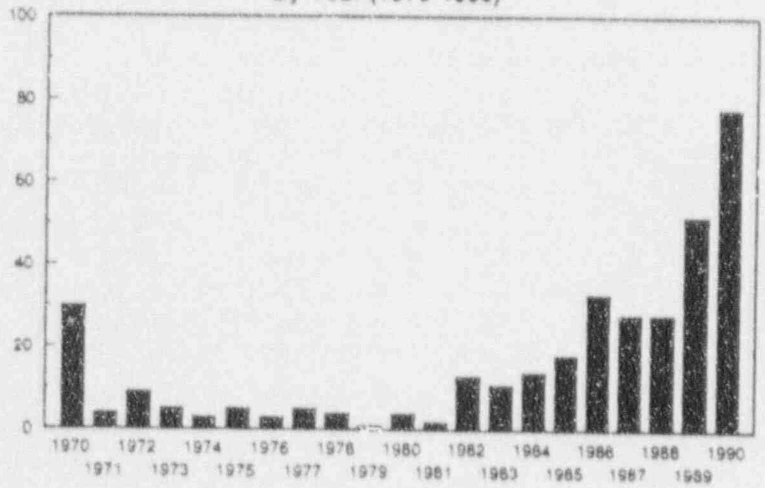
[3] The implied issuer rating is the rating that would be assigned on an issuer's senior unsecured debt, if the issuer had such debt outstanding.

decisions (or in the case of an investor, buy/sell decisions) does not rise with the size of the issuer. This approach sidesteps the measurement-error problem associated with estimates of dollars outstanding in the murky speculative-grade market.

Figure 6

Number of Defaulting Issuers

By Year (1970-1990)



One-Year Default Rates

The most commonly reported default number is the one year speculative-grade default rate. Moody's calculates this statistic by dividing the number of issuers defaulting over a calendar year by the number of speculative-grade issuers outstanding at the beginning of the year. Figure 7 plots one-year speculative-grade default rates from 1970 through 1990.

Figure 7

One Year Speculative Grade Default Rates

(1970-1990)

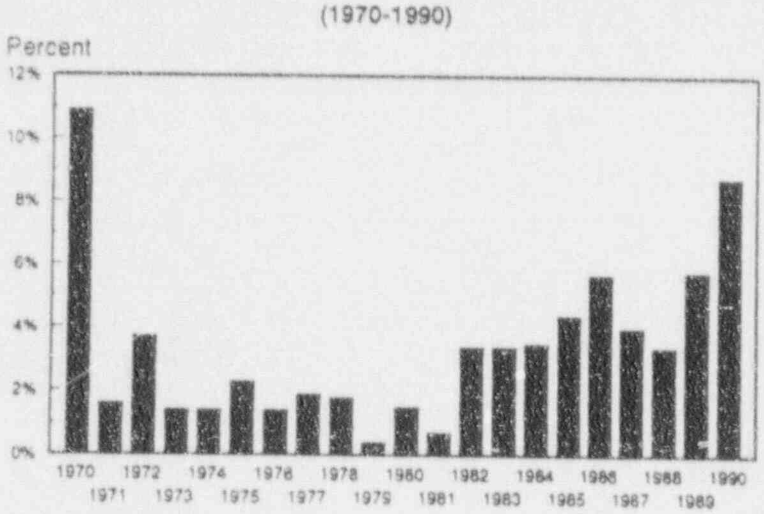


Table 2 is a fuller representation of one-year default rates for each of the rating categories. These are computed as the number of defaulting issuers with a given rating at the beginning of a year divided by the number of outstanding issuers with the same rating on January 1 of that year. The last two rows of Table 2 give the one-year issuer default rates for investment-grade issuers and speculative-grade issuers, respectively. Note that for all but seven of the past 21 years, the one-year issuer default rate for investment-grade issuers was zero.

Moody's refined its rating categories in 1982 by adding numerical modifiers. Table 3 repeats the above exercise for the additional rating categories for the period covering 1983 through 1990. Both tables confirm the notion that issuer default rates have been higher for lower-rated issuers.

Default Rates for Periods Longer Than a Year

Although the one-year issuer default rate has garnered much media attention, a more relevant summary of issuer experience for many corporate bond investors is the cumulative default rate for groupings -- or cohorts -- of issuers. The idea is similar to one-year default rates except that cohorts are constructed at fixed points in time and are followed for longer periods. Thus, cumulative default rates indicate the share of a portfolio of bonds formed at a given date that subsequently default.

Starting in 1971, Table 5 traces annually the cumulative default rates for cohorts of Moody's-rated issuers formed at the beginning of each year and followed to year-end 1990. Cohort groups are separated into different Moody's rating categories. Table 5 can be used to answer, for example, the question "What percent of B-rated issuers with bonds outstanding in 1983 defaulted by 1990?" The answer is found in the last row and last column of the section labeled "Cohort Formed January 1, 1983": 36.2% The first column of each section, by definition, is the one-year issuer default rate and corresponds to that year's entry in Table 2.

Other studies generally form cohorts of bonds *issued* during a given year and track the bonds' performance. In contrast, Moody's approach, which forms cohorts of all Moody's-rated issuers outstanding at January 1 of each year, provides an indicator of the experience of a portfolio of seasoned bonds purchased in a given year. Table 4 gives average default rates for investment horizons spanning one to twenty years.[4]

Results

The statistics in Tables 2 through 5 clearly show that lower rated issuers are more likely to default. On average over the last 21 years, 4.2% of speculative-grade issuers defaulted within one year, compared with 0.07% of investment-grade issuers (Table 2). Average one-year default rates, displayed in Figure 8, climb from 0.00% for Aaa issuers to over 8% for issuers rated single B.

Figure 9 suggests that the relationship between ratings and defaults also holds generally for issuers ranked by numerical-rating category over the period for which that system has been in effect: 1983 through 1990. Default rates climb from 0.00% for Aaa-down to A2-rated issuers to more than 17% for issuers rated B3.

Finally, the higher default risk for lower-rating categories remains evident as one considers investment periods exceeding one year. For example, as seen in Figure 10, average default rates for five-year holding periods climb uniformly from 0.2% for issuers rated Aaa to 24.3% for issuers rated B. The same pattern holds for average default rates for ten-year holding periods (Figure 11) and fifteen-year holding periods (Figure 12).

Throughout the study period, there was a sharp distinction between companies in the investment-grade Baa category and companies in the upper-speculative-grade

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[4] Incremental increases in cumulative default rates are calculated and weighted by the number of issuers in the cohort; the average increase is then added to the previous year's average cumulative default rate.

Figure 8

Average One-Year Default Rates

1970-1990

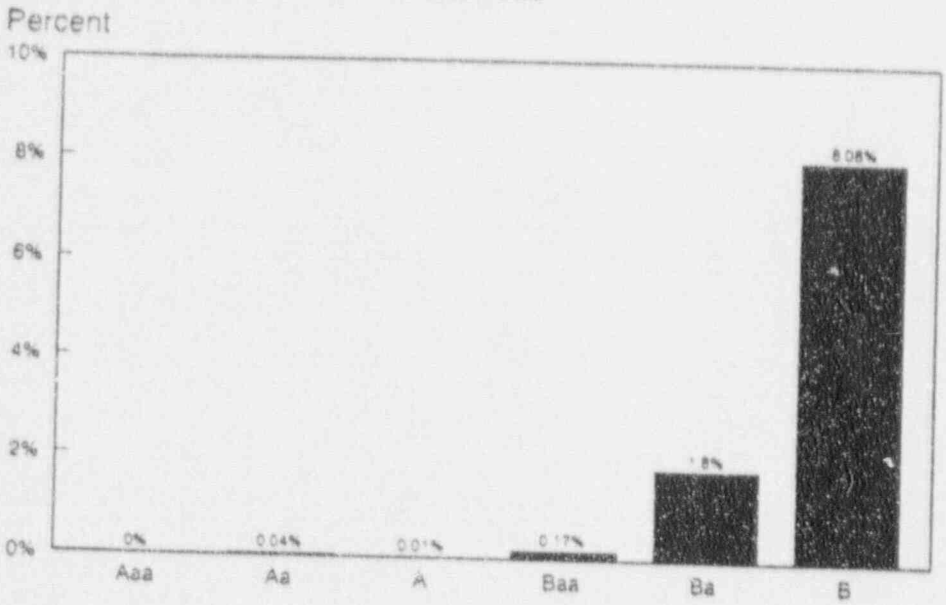


Figure 9

Average One-Year Default Rates

1983-1990

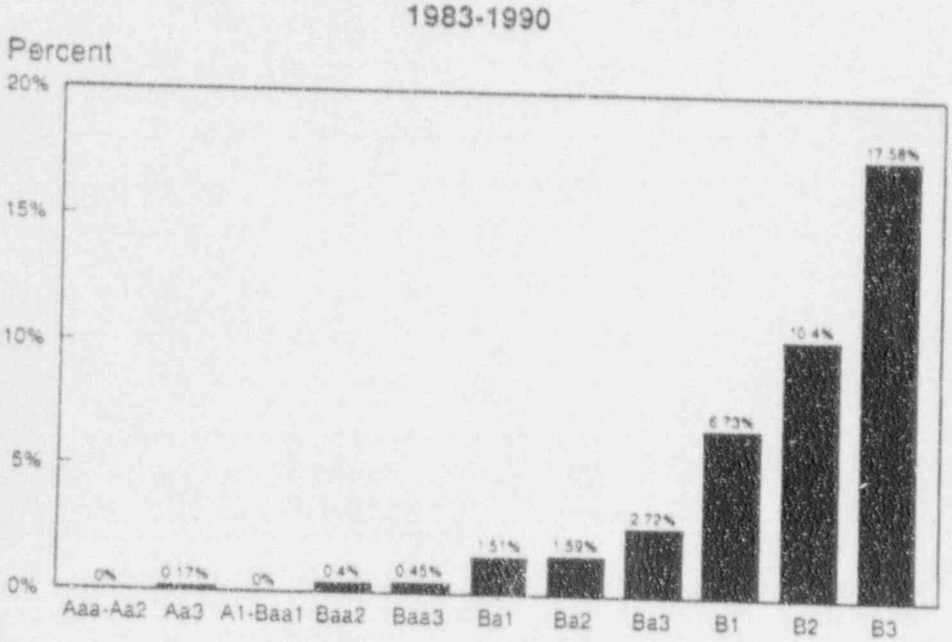


Figure 10

Average Five-Year Default Rates

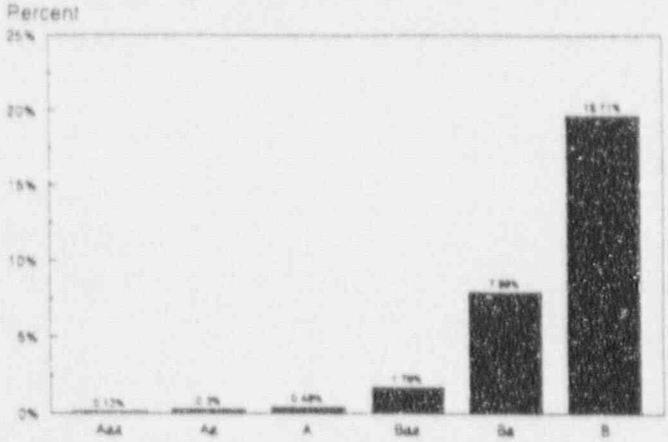


Figure 11

Average Ten-Year Default Rates

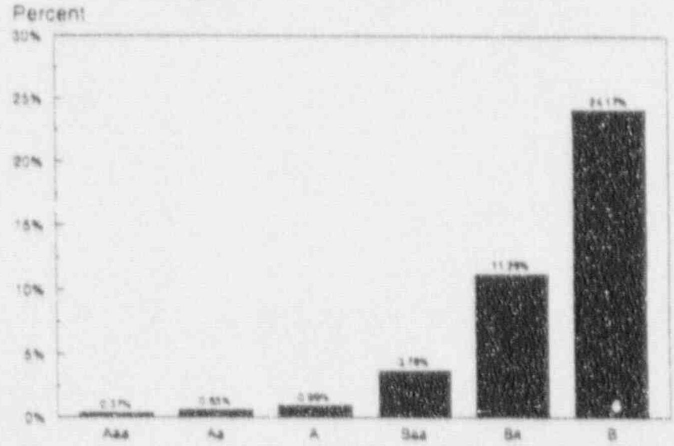
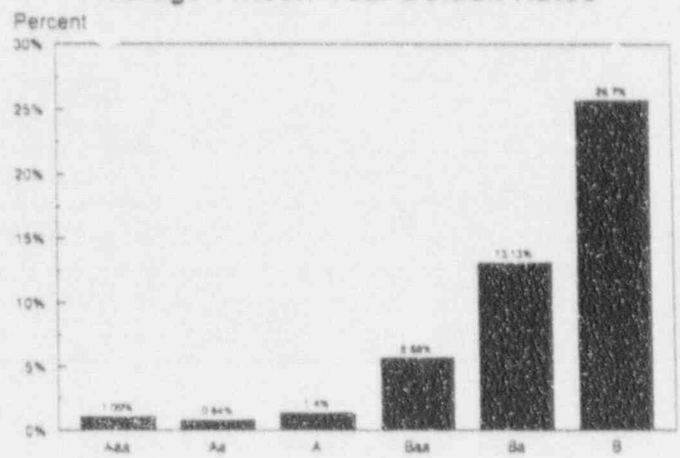


Figure 12

Average Fifteen-Year Default Rates



Ba category. In the past 21 years, Ba companies have been two to ten times more prone to default than Baa-rated companies over any time horizon. And B-rated companies have been over four times more prone to default than Ba-rated companies.

Default Rate Volatility by Rating Category

Moody's also looked at the evenness of default rates from year to year. We found that the one-year default rate for speculative-rated companies varied from a high of 10.9% in 1970 to 0.4% in 1979 (Figure 7). This volatility of default rates is significantly higher for the lower rating categories. That is, not only are default rates higher at the low end of the rating scale, but the rate of default is more volatile and less predictable in any given year. For example, the standard deviations for one-year default rates during the study period range from zero to 0.3% in the investment-grade categories. The Ba standard deviation rises to 1.8% and the B standard deviation is 5.0% (Figure 13).

A look at standard deviations of default rates over longer bond holding periods shows a similar finding. The standard deviations of five- and ten-year default rates of investment-grade issuers were below 0.9% (Figures 14 and 15). Default rates of speculative-grade issuers, by contrast, were five to eight times more volatile than those of investment-grade issuers.

Dollar Default Rates

Beginning with this study, Moody's will report, in addition to issuer default statistics, one-year default rates based on the dollar amount of defaulting Moody's-rated and public corporate debt. We believe providing this statistic facilitates comparison to other reports of corporate bond experience and makes fuller use of Moody's database.

Moody's estimates that $208.0 billion par value of Moody's rated and/or publicly registered speculative-grade corporate bonds were outstanding as of January 1, 1990. Of these, approximately $21.9 billion (including convertible bonds) belonged to companies that defaulted during 1990. We therefore estimate the dollar default rate for 1990 to be 10.5%.

This default rate is somewhat higher than the one calculated using issuer count figures. Among other things, it suggests that defaulting companies in 1990 had greater than average levels of debt outstanding.

Figure 13

Standard Deviation of One-Year Default Rates

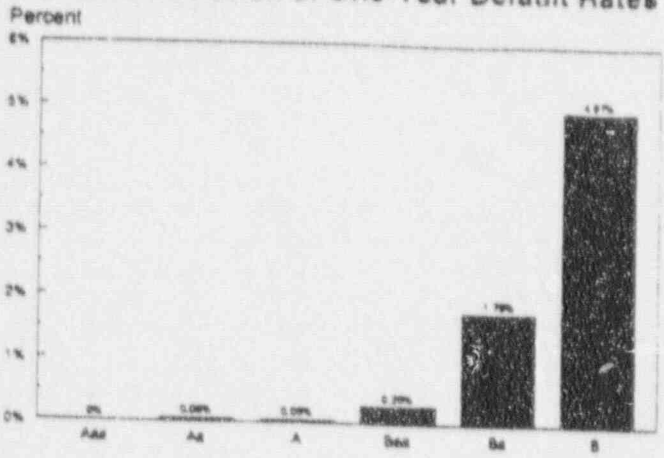


TABLE 2

One [illegible] Default Ra[illegible] by Year ar[illegible]ng 1970–1990

	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Aaa	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Aa	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
A	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Baa	0.3%	0.0%	0.0%	0.5%	0.0%	0.0%	0.0%	0.3%	0.0%	0.0%	0.0%
Ba	8.4%	1.5%	0.5%	0.5%	0.0%	1.6%	1.1%	0.6%	1.1%	0.5%	0.0%
B	21.6%	0.0%	11.8%	3.4%	6.9%	3.0%	0.0%	8.8%	5.3%	0.0%	4.4%
Investment Grade											
	0.1%	0.0%	0.0%	0.2%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%
Speculative Grade											
	10.9%	1.6%	3.7%	1.4%	1.4%	2.3%	1.4%	1.9%	1.8%	0.4%	1.5%

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Avg
Aaa	0.0%	0.0%	[illegible]	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.00%	0.00%
Aa	0.0%	[illegible]	[illegible]	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%	0.00%	0.04%
A	0.0%	[illegible]	[illegible]	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.00%	0.01%
Baa	0.0%	0.3%	[illegible]	3.6%	0.0%	1.1%	0.0%	0.0%	0.5%	0.00%	0.17%
Ba	0.0%	2.6%	[illegible]	[illegible]	2.0%	1.9%	2.6%	1.5%	2.7%	3.34%	1.80%
B	4.1%	2.2%	6.0%	[illegible]	8.7%	11.6%	5.3%	5.7%	8.6%	12.93%	8.98%
Investment Grade											
	0.0%	0.2%	0.0%	0.2%	0.0%	0.3%	0.0%	0.0%	0.2%	0.0%	[illegible]
Speculative Grade											
	0.7%	3.4%	3.4%	3.5%	4.4%	5.7%	4.0%	3.4%	5.8%	8.8%	4.18%

TABLE 3

One-Year Default Rates by Year and Modified Rating

	1983	1984	1985	1986	1987	1988	1989	1990	Avg
Aaa-Aa2	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.00%	0.00%
Aa3	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.1%	0.00%	0.17%
A1-Baa1	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.00%	0.00%
Baa2	0.0%	0.0%	0.0%	2.5%	0.0%	0.0%	0.7%	0.00%	0.40%
Baa3	0.0%	1.8%	0.0%	0.9%	0.0%	0.0%	0.9%	0.00%	0.45%
Ba1	0.0%	0.0%	0.0%	1.2%	5.1%	0.0%	1.0%	3.26%	1.51%
Ba2	0.0%	1.5%	4.6%	1.1%	0.8%	0.0%	1.7%	3.42%	1.59%
Ba3	2.4%	0.0%	1.8%	2.6%	2.4%	2.9%	3.8%	3.45%	2.72%
B1	1.3%	9.5%	4.4%	9.8%	4.2%	5.0%	7.3%	9.51%	6.73%
B2	18.5%	3.7%	17.9%	7.0%	6.8%	7.0%	11.7%	12.73%	10.40%
B3	11.1%	0.0%	5.0%	26.9%	8.7%	8.3%	11.8%	41.18%	17.58%

TABLE 4

Average Cumulative Default Hates 1 to 20 Years

Years	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Aaa	0.0%	0.0%	0.0%	0.1%	0.2%	0.3%	0.5%	0.6%	0.8%	1.0%	1.3%	1.6%	1.9%	2.3%	2.8%	3.4%	3.8%	4.2%	4.2%	4.2%
Aa	0.0%	0.1%	0.2%	0.4%	0.6%	0.9%	1.1%	1.2%	1.4%	1.4%	1.5%	1.6%	1.7%	2.0%	2.0%	2.0%	2.2%	2.5%	2.9%	3.6%
A	0.0%	0.1%	0.3%	0.5%	0.6%	0.8%	1.0%	1.3%	1.5%	1.8%	2.2%	2.5%	2.9%	3.1%	3.3%	3.5%	3.8%	4.1%	4.3%	4.3%
Baa	0.2%	0.5%	1.0%	1.4%	1.8%	2.3%	2.8%	3.4%	3.9%	4.4%	4.9%	5.5%	5.9%	6.5%	7.2%	7.9%	8.6%	9.3%	[illegible]	10.6%
Ba	1.8%	4.2%	6.3%	8.3%	10.2%	11.7%	12.8%	13.9%	15.1%	16.1%	17.0%	17.9%	18.8%	19.5%	20.1%	20.7%	21.4%	21.7%	21.8%	22.0%
B	8.1%	13.7%	18.3%	21.7%	24.3%	26.6%	28.7%	30.5%	31.2%	31.6%	32.1%	32.5%	33.2%	33.4%	33.7%	34.0%	34.0%	34.0%	34.0%	34.0%
Investment Grade																				
	0.1%	0.2%	0.5%	0.7%	1.0%	1.3%	1.6%	1.9%	2.3%	2.6%	3.0%	3.4%	3.8%	4.2%	4.6%	5.1%	5.5%	6.0%	6.5%	6.8%
Speculative Grade																				
	4.2%	7.7%	10.6%	12.9%	15.0%	16.8%	18.1%	19.2%	20.3%	21.2%	22.0%	22.8%	23.7%	24.2%	24.8%	25.3%	[illegible]	26.0%	26.1%	26.3%

TABLE 5

Cumulative Default Rates for Cohorts Formed 1971 through 1990

Years	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Cohort Formed January 1, 1971																				
Aaa	0.0%	0.0%	[illegible]	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	2.1%	2.1%	2.1%	2.1%
Aa	0.0%	0.0%	0.0%	0.0%	[illegible]	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.3%
A	0.0%	0.0%	0.0%	0.0%	[illegible]	0.4%	0.4%	0.4%	0.4%	0.7%	0.7%	1.1%	1.4%	1.4%	1.4%	1.8%	1.8%	2.5%	2.5%	2.5%
Baa	0.0%	0.3%	0.9%	1.1%	1.1%	1.4%	2.0%	2.6%	2.6%	2.8%	2.8%	3.7%	4.0%	4.3%	4.8%	[illegible]	6.6%	6.6%	7.1%	8.3%
Ba	1.5%	2.0%	3.0%	3.6%	5.1%	5.6%	6.1%	7.1%	7.1%	7.1%	8.1%	8.6%	9.1%	9.1%	9.6%	12.2%	12.2%	12.2%	12.7%	12.7%
B	0.0%	8.3%	8.3%	11.1%	11.1%	11.1%	16.7%	16.7%	16.7%	16.7%	16.7%	22.2%	22.2%	22.2%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%
Cohort Formed January 1, 1972																				
Aaa	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	[illegible]	0.0%	0.0%	0.0%	0.0%	1.9%	1.9%	1.9%	1.9%	
Aa	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.3%	
A	0.0%	0.0%	0.0%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.6%	[illegible]	1.0%	1.0%	1.3%	1.3%	1.9%	1.9%	2.3%	
Baa	0.0%	0.5%	0.8%	0.8%	1.1%	1.6%	2.2%	2.2%	2.7%	2.7%	3.3%	3.5%	3.8%	4.3%	5.1%	6.0%	6.2%	6.8%	8.1%	
Ba	0.5%	1.5%	2.0%	3.5%	4.0%	4.5%	5.6%	5.6%	5.6%	6.6%	7.6%	8.1%	9.1%	10.1%	12.6%	12.6%	12.6%	13.1%	13.1%	
B	11.8%	11.8%	14.7%	14.7%	14.7%	20.6%	20.6%	20.6%	20.6%	20.6%	26.5%	26.5%	26.5%	29.4%	29.4%	29.4%	29.4%	29.4%	29.4%	

Enclosure B

Notice of Receipt of petition for rulemaking

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

[Docket No. PRM-30-59]

General Electric Co. and Westinghouse Electric Corp.;

Filing of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The General Electric Company and the Westinghouse Electric Corporation request that the Nuclear Regulatory Commission (NRC) amend its regulations establishing general requirements for decommissioning licensee facilities. The petitioners request that the NRC issue a rule that would provide a means for the self-guarantee of decommissioning funding costs by certain NRC non-electric utility reactor licensees who meet stringent financial assurance and related reporting and oversight requirements.

DATES: Submit comments by (60 days following publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Joseph Wang, Chief, Engineering and Decommissioning Section, Radiation Protection & Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC. 20555, Telephone (301)-492-3746 or Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC. 20555, Telephone: (301)492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has received a joint petition for rulemaking submitted by the General Electric Company (GE) and the Westinghouse Electric Corporation (Westinghouse). The petition was assigned Docket No. PRM-30-59 on July 11, 1991. The petitioners request that the NRC amend its decommissioning regulations contained in 10 CFR Parts 30, 40, 50, 70, and 72 to provide a means for self-guarantee of decommissioning funding costs by certain NRC licensees who meet stringent financial assurance and related reporting and oversight requirements. Electric utility reactor licensees under 10 CFR Part 50 are excluded from this petition.

On June 27, 1988 (53 FR 24018), the NRC published a final rule that established general requirements for decommissioning nuclear facilities. These requirements provide assurance that licensed facilities will be decommissioned in a safe and timely manner and that adequate funds will be available for decommissioning. Under the current decommissioning requirements, licensees are permitted to provide financial assurance of decommissioning funding through prepayment, insurance, a surety bond, a letter of credit, a line of credit, a parent company guarantee, or the establishment of a sinking fund.

In March 1990, the petitioners each sought a specific exemption from the financial assurance instrument requirements discussed in the previous paragraph. The requested exemptions would have enabled the petitioners to demonstrate financial assurance by submitting a self-guarantee that otherwise met or exceeded the criteria for qualifying parent company guarantees under Appendix A to 10 CFR Part 30. The Commission denied the requests for exemptions on July 31, 1990. The petitioners each submitted a Petition for Reconsideration on August 20, 1990. The Commission denied these Petitions for Reconsideration on March 7, 1991, but invited GE and Westinghouse to submit a petition for rulemaking to address the issues raised concerning self-guarantee for decommissioning funding.

The Petitioners

The petitioners each hold NRC licenses issued under the regulations in 10 CFR Chapter I or comparable licenses issued by an Agreement State. Therefore, the petitioners are subject to the Commission's requirements. The petitioners state that they have sufficient resources to provide the degree of financial assurance necessary to meet the stated requirement that adequate funds be available for decommissioning. The petitioners assert that they are in excellent financial condition, possess vast assets, enjoy premier credit standing, and have long-lived records of prosperity. The petitioners contend that few financial institutions in the business of extending letters of credit or other forms of third-party guarantees can demonstrate the same degree of financial capacity. The petitioners believe that this recognized standing in the financial community supports their contention that self-guarantee by licensees of similar financial substance is more than sufficient to meet the financial assurance requirements of the decommissioning rule.

Need for the Suggested Amendments

The petitioners have submitted this petition for rulemaking because they believe that they have been adversely and unreasonably affected by the limitations in the current decommissioning rule. The petitioners state that, under the current rule, companies like the petitioners are unable to guarantee decommissioning funding costs when they themselves are NRC licensees. However, according to the petitioner, less financially strong institutions, such as insurance companies, banks, and savings and loan institutions, are permitted to guarantee the decommissioning funding costs of NRC licensees without providing any evidence of financial strength.

Furthermore, according to the petitioners, licensees without the financial capabilities of the petitioners may provide qualifying parent company guarantees solely because these parent companies are legal entities distinct from the subsidiary licensees whose decommissioning funding they guarantee.

The petitioners state that the lack of an internal decommissioning funding method imposes unwarranted compliance costs upon them. The current rule compels the petitioners to either restructure their licensed activities into less financially secure licensee subsidiaries for which the petitioners could then provide parent company guarantees or to obtain external financial assurance at a cost that would be significant over the term of their licensed activities.

The Solution

The petitioners suggest that the NRC amend its regulations pertaining to decommissioning funding to permit an additional method for providing the required financial assurance. The petitioners also suggest that the NRC add provisions in which it would establish the criteria to be used in determining the qualifications of a licensee to provide a self-guarantee of funds. According to the petitioners, the suggested criteria for self-guarantee of funds are more stringent than those currently required for a parent company guarantee.

The suggested amendment would provide for the self-guarantee of funds for decommissioning costs by any licensee, other than a person licensed to operate an electric utility reactor under 10 CFR Part 50, that --

(1) Has no majority shareholder, that is, a company without a parent company;

(2) Is subject to the reporting requirements of the Securities Exchange Act of 1934; and

(3) Demonstrates a level of present and future financial stability sufficient to meet the required financial test.

Need for the Amendments

The petitioners believe that their suggested amendments are in the public interest. The petitioners state that the proposed amendments would encourage direct licensee responsibility by financially strong companies. The petitioners believe that the current rule may encourage a financially strong, independent company to create less financially secure subsidiaries to hold NRC licenses in order to avoid the additional cost of available decommissioning funding assurance methods. The petitioners assert that the consolidation of financial resources in a single licensed organization would enhance the performance of all licensee responsibilities thereby better achieving the stated purpose of the required financial assurance provisions.

In addition, the suggested amendments would permit licensees without parent companies to conserve valuable resources by executing a self-guarantee rather than expending increasing amounts of money for a line or letter of credit. According to the petitioners, the cumulative cost of a line or letter of credit is estimated to be in excess of several million dollars for each license over the next 40 years. These funds would be unrecoverable and, in the petitioners' view, this represent an unwarranted expenditure of funds.

The Petitioners' Suggested Amendments

The petitioners have suggested specific amendments to the provisions of 10 CFR Chapter I to accomplish their suggested amendments. The suggested amendments, with minor editorial adjustments to codification and amendatory language necessary to meet publication requirements, are as follows:

1. In § 30.35, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used

if the guarantee and test are as contained in Appendix A to th . part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B to this part. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

2. A new Appendix B is added to Part 30 to read as follows:

Appendix B to Part 30 -- Criteria Relating To Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

I. Introduction.

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnisning its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes a financial test. This appendix establishes criteria for passing the financial test for the self guarantee.

II. Financial Test.

A. To pass the financial test, the company must meet all of the following criteria. The company must have:

(i) A current rating for its most recent bond issuance of AAA, AA, or A, as issued by Standard and Poor's or Aaa, Aa, or A, as issued by Moody's; and

(ii) Tangible net worth at least ten times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

(iii) Tangible net worth of at least $1 billion; and

(iv) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the current decommissioning cost estimates (or prescribed amount if certification is used).

B. The company's independent certified public accountant must have compared the data used by the company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

C. The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.

D. 1. After the initial financial test, the company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

2. If a company no longer meets the requirements of paragraph A of this section, the licensee must send notice to the Commission of intent to establish alternate financial assurance as specified in the Commission's regulations. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year end data show that the company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Company Guarantee.

The terms of self guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Commission. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Commission, as evidenced by the return receipt.

B. The licensee will provide alternate financial assurance as specified in the Commission's regulations within 90 days after receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put into effect by the licensee.

D. The licensee will promptly forward to the Commission and the licensee's independent auditor all reports filed by the licensee (in its capacity as a registrant) with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities Exchange Act of 1934.

E. If at any time the licensee's most recent bond issuance ceases to be rated in any category of A or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service.

3. In § 40.36, the introductory text of paragraph (e)(2) is revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(e) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the

requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B of 10 CFR Part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

4. In § 50.75, the introductory text of paragraphs (e)(1)(iii) and (e)(2)(iii) are revised to read as follows:

§ 50.75. Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(1) * * *

(iii) A surety method, insurance or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to provide financial insurance for decommissioning must contain the following conditions.

* * * * *

(2) * * *

(iii) A surety method, insurance, or other guarantee method. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B of 10 CFR Part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

* * * * *

5. In § 70.25, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds

for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B of 10 CFR Part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

6. In § 72.30, the introductory text of paragraph (c)(2) is revised to read as follows:

§ 72.30 Decommissioning planning, including financing and recordkeeping.

* * * * *

(c) * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds

for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix B of 10 CFR Part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

*   *   *   *   *

(Note: The petitioners' suggested amendment to 10 CFR Part 72 was presented as an amendment to § 72.18, which was amended by the final rule published June 27, 1988 (53 FR 24055). When Part 72 was revised on August 19, 1988 (53 FR 31658), the section containing the provisions applicable to decommissioning was recodified as § 72.30.)

Supporting Information

The petitioners assert that, coupled with an appropriately demanding financial test and annual recertification, self-guarantee by a licensee clearly provides reasonable assurance that sufficient decommissioning funds will be available. The petitioners state that whatever incremental assurance of funding availability may be achieved by a separate parent guarantee may also be achieved by a licensee's self-guarantee when the licensee can show that it is substantially less likely to face bankruptcy than a parent guarantor qualifying under Appendix A to 10 CFR Part 30. The stricter financial test criteria suggested by the petitioners, in their view, more than offset the benefits derived from segregating a parent company's assets in the event of a bankruptcy by the subsidiary licensee.

The petitioners believe that an adequate early warning system can be established to predict a licensee's inability to meet its financial obligations. Therefore, there is no reason not to accept the assets of the licensee itself as the basis for decommissioning funding assurance for its own licenses. According to the petitioners, the Environmental Protection Agency accepts self-guarantee as a method of providing financial assurance of funding of the closure of hazardous waste facilities.

The petitioners believe that the bond rating requirements contained in their suggested amendments provide an effective early warning system concerning changes in a licensee's financial condition which may adversely affect the available of funds for decommissioning. Bond ratings are assigned by independent entities such as Standard and Poor's or Moody's and are based on their evaluations of relative investment qualities of bonds and the creditworthiness of their issuers. The bond rating given an issuance reflects past, present, and future risks. Bond ratings are not static. They change in time to reflect the changing financial condition of an issuer.

According to the petitioners, statistics indicate that rating systems work as predictive tools. The petitioners state that bonds holding ratings of "A" or better, the petitioners' suggested threshold, have an extremely low default rate over both short and long periods of time. The petitioners indicate that the incidence of any issuer rated "A" or better defaulting within six years following the receipt of a rating of "A" or better is less than one percent. The petitioners state that this attests to both the financial quality of the issuers who are rated "A" or better as well as the integrity of the ratings system as a method of assessing the current and future strength of the issuers.

The petitioners note that the average default rates since 1970 for issuers rated "Baa" is more than four times higher than the average one year default rates for issuers rated "A" or better. In addition, six years after the ratings were issued the average cumulative default rates for issuers rated "Baa" are approximately two and a half times greater than the default rates for issuers rated "A" or better, three to five years after the ratings were issued the average default rates for issuers rated "Baa" were approximately three times the rates for issuers rated "A" or better, and in the second year after the ratings were issued the default rates for issuers rated "Baa" were at least five times the rates for issuers rated "A" or better. The petitioners point out that a rating of "Baa" constitutes an acceptable rating for parent company guarantors under the current decommissioning rule.

The petitioners state that these statistical comparisons clearly demonstrate that a guarantee by a licensee holding an "A" bond rating offers substantially greater protection than a company holding a "Baa" bond rating. Therefore, the petitioners believe that their suggested amendments provide more than reasonable assurance of adequate funds for decommissioning.

In addition, the petitioners believe that the suggested requirement that a licensee notify the NRC of a change in its bond rating that removed the licensee using a self-guarantee of "A" or batter provides the NRC ample early warning of a licensee's potential economic distress. Coupled with the other reports that the NRC would receive if the suggested amendments were adopted, the petitioners believe that the NRC would be apprised of significant financial developments in time to require a licensee to take any appropriate corrective action.

Request for Comments

In addition to comment on the proposed petition and the petitioners' proposed criteria, the NRC is soliciting public comment on --

(1) What other criteria, if any, might be proposed for self-guarantee and the basis for the criteria; and

(2) Information as to the number or percentage of NRC licensees that might be able to comply with the s.lf-guarantee criteria proposed by the petitioners or any other self-guarantee criteria proposed by the commenter.

Dated at Rockville, Maryland, this day of August 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,
Executive Director for Operations.

Enclosure C

Statement of Executive Direc r for Operations

Approvi g Notice of Petition for Rulemaking

STATEMENT OF EXECUTIVE DIRECTOR FOR OPERATIONS
APPROVING NOTICE OF PETITION FOR RULEMAKING

Approved for Publication

The Commission delegated to the EDO the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551(4)) subject to the limitations in NRC Manual Chapter 0103, Organization and Functions, Office of the Executive Diretor for Operations, paragraphs 0213, 038, 039, and 0310.

The enclosed notice of receipt of a petition for rulemaking normally is issued by the Office of Administration without prior approval from the EDO or the Commission because this type of notice is strictly administrative in nature. However, in order to expedite this possible rulemaking action, public comments which are normally solicited through an Advanced Notice of Proposed Rulemaking is being combined with the notice of receipt of a petition for rulemaking.

This notice of receipt of a petition for rulemaking is issued under general policy guidance from the Commission, does not constitute a significant question of policy, and does not amend regulations contained in 10 CFR 7, 8, or 9 Subpart C concerning matters of policy. I therefore find that this notice is within the scope of my rulemaking authority and am proceeding to issue it.

Date

James M. Taylor
Executive Director for Operations

Enclosure D

Commission SRM dated February 12, 1991

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

OFFICE OF THE SECRETARY

Action: Bernero, NMSS
Cys: Taylor
Sniezek
Thompson
Blaha
Murley, NRR
Beckjord, RES
Meyer, ADM
Bykoski, NMSS

February 12, 1991

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-90-420 - GENERAL ELECTRIC AND WESTINGHOUSE PETITION FOR RECONSIDERATION OF COMMISSION'S DENIAL OF REQUEST FOR EXEMPTION FROM REQUIREMENTS OF THE DECOMMISSIONING RULE

This is to advise you that the Commission (with Chairman Carr and Commissioners Rogers and Remick agreeing) has not objected to the denial of the GE and Westinghouse petition for reconsideration. Commissioner Curtiss believes that these particular licensees have made a convincing case in support of their request that they be allowed to meet the decommissioning funding requirements through the use of self-guarantees and would therefore have granted these licensees' requests for reconsideration and exemption.

The staff should revise the proposed responses to General Electric and Westinghouse, as indicated in the attached mark-up, and indicate to General Electric and Westinghouse the willingness to treat their petitions for reconsideration, with any supplements they deem necessary, as petitions for rulemaking if they so desire. The staff should also indicate that such rulemaking would be conducted on an expedited basis. The staff should report to the Commission whether General Electric or Westinghouse has indicated that it wishes to pursue rulemaking and, if so, the staff should propose an expedited schedule with completion in six to twelve months or earlier.

~~(EDO)~~ (NMSS) (SECY Suspense: 3/6/91) 9100030

If General Electric or Westinghouse desire to pursue rulemaking, the staff should solicit their views, as well as the views of the public, on what criteria might be proposed for self-guarantee and the basis for the criteria. The staff should attempt to determine the number or percentage of NRC licensees that might be able to comply with any self-guarantee criteria proposed by petitioners, commenters, or the staff.

~~(EDO)~~ (NMSS) (SECY Suspense: 3/29/91) 9100031

SECY NOTE: THIS SRM AND SECY-90-420 WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS FROM THE DATE OF THIS SRM

Rec'd Off. EDO
Date 2-12-91
Time 3:30 p

NRC continues to believe that the GE request is tantamount to seeking an informal rule change~~because its proposal was explicitly considered in the rulemaking and was rejected~~. If GE wishes to pursue the acceptability of self guarantees in relation to the decommissioning rule, it should submit a petition for rulemaking.

In a letter dated August 27, 1990, NRC granted your request for a time extension to the August 31, 1990, filing deadline. We said the NRC would notify you of the Commission's decision regarding your petition request and that the extension would expire 15 days from the time you are notified. Therefore, you should comply with the financial assurance requirements of the decommissioning rule by (insert date of 15 days following EDO signature).

Sincerely,

James M. Taylor
Executive Director
for Operations

Enclosure: As stated

The staff would be receptive to treating your August 20, 1990 submittal, with any supplements you deem necessary, as a formal petition for rulemaking if you desire. In either case, the Commission will conduct such a rulemaking on an expedited basis. Please inform me of your intentions on this matter. If you desire to pursue a rulemaking, we would also appreciate your views on criteria for self-guarantees and the basis [illegible] NRC criteria.

Attachment:
As stated

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