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NUCLEAR REGULATORY COMMISSION

[10 CFR Part 140]

FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

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USNRC

Indemnification of Spent Reactor Fuel Stored at a Reactor Site
Different Than the One Where It was Generated. **'85 JUL 23 P5:25**

AGENCY: Nuclear Regulatory Commission.

OFFICE OF SECRETARY
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ACTION: Information notice.

SUMMARY: The Commission has decided to exercise its discretionary statutory authority under the Price-Anderson Act and again extend Government indemnity to spent reactor fuel stored at a particular reactor site different than the one where it was generated. Absent this action by the Commission, this spent reactor fuel would not have been covered by Government indemnity in the event of a nuclear incident at the site where this spent fuel was stored and where the reactors involved have the same licensee.

FOR FURTHER INFORMATION CONTACT: Mr. Ira Dinitz, Office of State Programs, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-9884.

SUPPLEMENTARY INFORMATION: Most operating reactor licensees have increased, or are planning to increase, the capacity of their onsite spent fuel storage pools. In some instances where the capacity of the storage pools at the reactor site cannot be increased sufficiently to meet the licensee's needs, fuel storage may be sought at another location. One method of storing spent fuel away from the reactor from which it is discharged is to store it in the spent fuel pool of another of the same licensee's reactors but at a different site.

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The Commission has received a request from Duke Power Company to authorize and indemnify this type of activity. The Duke Power request is for Commission authorization permitting Duke to store spent fuel discharged from its Oconee Units 1, 2, and 3 at its McGuire Unit 2 reactor. Duke is seeking Price-Anderson indemnity protection for all such storage of spent fuel at the distant reactor location. The Commission considered and approved similar requests by Carolina Power and Light Company in August 1977 and Duke Power Company in November 1982 (See Federal Register Notice 42 FR 44615 and 46 FR 55024).

Under the Price-Anderson Act (§ 170 of the Atomic Energy Act of 1954, as amended (the Act)), financial protection and government indemnity are mandatory for production and utilization facilities, such as reactors, licensed under § 103 and § 104 of the Act. This financial protection and indemnity covers the "licensed activity" which encompasses not only possession and operation of the reactor facility itself but also certain ancillary activities including (1) possession of the new fuel (containing special nuclear material) being stored on-site for use in the reactor and (2) on-site storage of spent fuel following irradiation at that reactor. Mandatory indemnification does not extend to the fuel when it is stored at another reactor site.

Possession of spent fuel away from the facility where it was generated, i.e., at a location where it is not used in connection with the operation of the facility, is not a part of the ancillary activity of possession and operation of the facility where the spent fuel is to be stored. As a result, after being transferred from the reactor site where it was generated to some other

site, possession of such spent fuel must be licensed under other provisions of the Act which authorize licenses for possession and use of the special nuclear and byproduct material and would not be subject to the mandatory indemnity requirements of the Act providing that the Commission require financial protection of and indemnify reactor (and other production and utilization facility) licensees. Accordingly, no indemnity protection automatically would be afforded spent fuel stored away from the facility where it is produced or used. To indemnify this spent fuel, the Commission must require the licensee at whose facility the spent fuel will be stored to maintain financial protection and to be indemnified by exercising its discretionary authority under §170 of the Act. For the purposes of Price-Anderson coverage, this exercise of discretionary authority would result in treating spent fuel produced at one reactor site but stored at a different site the same as spent fuel stored at the site of the reactor where it was produced. Thus, irradiated fuel generated by a reactor at one site whether stored by itself in the spent fuel pool of a reactor at a different site or commingled with the second reactor's irradiated fuel in that reactor's spent fuel pool would be covered by financial protection and indemnity.

The NRC believes that it would not be desirable to have a situation where spent fuel generated by one reactor and stored in the spent fuel pools of a second reactor at a different site would be unindemnified while the spent fuel produced by the second reactor and stored at the same site would be indemnified. If indemnity coverage were not extended to the spent fuel generated by the first reactor but stored at the site of a second reactor and if an accident occurred involving the fuel storage pool it would be virtually impossible to determine whether indemnified or unindemnified spent fuel caused the accident.

In view of the foregoing, the Commission has decided to exercise its discretionary authority under Section 170 of the Atomic Energy Act of 1954, as amended, and will modify Duke's indemnity agreement at the McGuire's facility to permit the storage of Oconee's irradiated fuel at McGuire. As required in 10 CFR 140.9, the Commission is publishing this amendment, which would redefine the term "the radioactive material" in Article I, paragraph 9 in the McGuire Indemnity Agreement B-83, to read as follows:

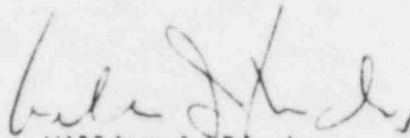
The radioactive material means source, special nuclear and byproduct material which (1) is used, was used or will be used in, or is irradiated, was irradiated or will be irradiated by, the nuclear reactors licensed under NPF-9 and NPF-17 or (2) was used in, or was irradiated in the nuclear reactors licensed under DPR-38, DPR-47, and DPR-55 and subsequently is transported to the site of the nuclear reactors licensed under NPF-9 and NPF-17 for the purpose of storage or (3) which is produced as a result of operation of the nuclear reactors licensed under NPF-9 and NPF-17.

This amendment relates to changes in an indemnity agreement incorporated into a 10 CFR Part 50 license. Accordingly, this amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR §51.22(c)(10)(i). Pursuant to 10 CFR §51.22(b), no environmental impact statement nor environment assessment need be prepared in connection with the issuance of this amendment.

(5 U.S.C. 552; Pub. L. 83-703, 68 Stat. 919, as amended by Pub. L. 85-256, 71 Stat. 576, as amended (42 U.S.C. 2210).

Dated at Bethesda, Maryland, this 22nd day of July, 1985.

FOR THE NUCLEAR REGULATORY COMMISSION



William J. Dircks
Executive Director for Operations