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6/14/89

U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Regulatory Publications Branch
DFIPS
Office of Administration and Resources Management

SUBJECT: NRC Draft Regulatory Guide, "Assuring the Availability of Funds for
Decommissioning Nuclear Reactors," DG-1003

Gentlemen:

Enclosed as Attachment (1) please find the comments submitted by Baltimore Gas and Electric Company in response to the subject Draft Regulatory Guide. In addition to these comments, please note that we have provided input to and fully support the comments provided by the Edison Electric Institute on the Draft Regulatory Guide.

Should you have any further questions regarding this matter, we will be pleased to discuss them with you.

Very truly yours,

GCC/CDS/dlm

Attachment

cc: D. A. Brune, Esquire
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ATTACHMENT (I)

Comments on NRC Draft Regulatory Guide "Assuring the Availability of Funds for Decommissioning Nuclear Reactors"

1. Regulatory Position 1.5.1 states that "estimates of future inflation should bear a reasonable relationship to recent (i.e., within 10 years) economic performance." The most recent 10-year historical period provides an appropriate basis for a preliminary estimate of the level of future inflation. However, it may be appropriate to evaluate the reasonableness of this estimate by considering other factors, including:

- o both short-term and long-term historical inflation,
- o current economic conditions,
- o the length of time remaining until decommissioning, and
- o educated judgments regarding economic conditions during that period.

Regulatory Position 1.5.1 should be modified to indicate that estimates of future inflation may consider other relevant factors, such as those items noted above, if appropriate.

2. Regulatory Position 2.1.4 requires licensees to "provide evidence that the financial instrument is an originally-signed duplicate (e.g., an executed copy of the instrument)." 10 CFR 50.75(b) requires only that licensees submit a copy of the financial instrument obtained. Regulatory Position 2.2.2 requires that the executed financial instrument be maintained in the licensee's records and be available for inspection. Regulatory Position 2.1.4 should be revised to permit submission of a conformed copy to satisfy the requirements of 10 CFR 50.75(b).
3. The draft guide contains several contradictory provisions for adjusting the certification amount, its annual funding, and the reporting of these adjustments to the NRC. Regulatory Position 1.2 states that adjustments of the initial certification amount to reflect inflation should be made annually, but need not be submitted to the NRC. Regulatory Position 1.5 requires that funding provisions include "adjustment of the initial amount set aside" (i.e., the preliminary certification amount) on an annual basis for inflation and every five years for technological or status changes. Regulatory Position 2.1.5 states that adjustments to the amortization for the funding method should be made at least once every five years, but refers to Regulatory Position 1.5, which requires annual inflation adjustments. Regulatory Position 2.1.5 also requires that adjustments pursuant to this provision be reported to the NRC.

In view of these disjunct and contradictory requirements, the Regulatory Guide should be modified to require that licensees:

- o recalculate the certification amount in accordance with the methodology of Regulatory Position 1.5,

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- o adjust the amortization of the funding method for the effects of these calculations no less frequently than once every five years, and
 - o report the adjusted certification amount and funding amortization to the NRC at the time of each adjustment of the funding amortization, but no less frequently than once every five years. Annual adjustment of the funding amortization should not be required because of the undue burden associated with obtaining State, Federal and IRS approval of such changes and the minimal benefit which would result from such frequent changes.
4. Regulatory Position 2.2.5 states that annual sinking fund deposits must at least equal "the total amount remaining to be accumulated, divided by the remaining years of the license." "Total amount remaining to be accumulated" should be defined as the initial certification amount adjusted for historical inflation and reduced by the fair market value of assets in the sinking fund.

Regulatory Position 2.2.5 also should be revised to require annual deposits, including projected earnings, equal to the lesser of (1) the amount resulting from the calculation described in the draft guide or (2) the amount necessary to increase the fair market value of the fund's assets to the level which results from dividing the certification amount, as adjusted for historical inflation, by the remaining years of the license as of the date of initial certification (revised to reflect subsequent years elapsed since the date of initial certification). This revision is necessary to give adequate recognition to partial prepayments into the external sinking fund, which represent actual funding of decommissioning costs in excess of the minimum amounts required by the NRC.

5. Regulatory Position 2.2.1 states that a licensee "using an escrow account, certificate of deposit, or trust fund to satisfy" the requirements of the regulations "should use the recommended wording of these methods" contained in Appendices to the draft guide. Because of differences between companies and the fact that many utilities have already established trusts to obtain tax deductions for decommissioning funding, it is not advisable to prescribe specific wording for financial instruments used to satisfy the NRC's requirements. Rather, the regulatory guide should include a listing of important provisions the NRC believes should be included in such financial instruments.

If, however, the NRC decides to include wording for certification methods such as is included in Appendix B of the draft guide, Regulatory Position 2.2.1 should be revised to state that the wording in the appendix is only a sample provided as guidance for use in developing methods of providing certification and is intended to provide licensees assistance in preparing and tailoring company-specific documents.

ATTACHMENT (I)

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The wording for trust fund agreements and related documents, as contained in Appendix B.3 of the draft guide, is severely deficient in its present form and should not be retained. These deficiencies are pervasive throughout the Appendix and may be categorized as follows:

- o The sample wording is elementary and either fails to address or inadequately addresses many significant topics.
- o The sample wording is based on documents applicable to licensees under 10 CFR Parts 30, 40, and 70, while nuclear power plants are licensees under 10 CFR Part 50 and are significantly different from licensees under the other parts of the NRC's regulations.
- o The sample wording inappropriately permits the NRC or a State agency to assume the authority, rights and duties of the grantor under the trust. The NRC and State agencies should exercise control over the grant's activities with respect to the nuclear decommissioning trust through existing regulations and administrative procedures.
- o The sample wording ignores the requirements of the IRS for tax-qualified nuclear decommissioning trusts. A substantial portion of many utilities' nuclear decommissioning costs will be funded through tax-qualified trusts which must comply with IRS requirements in order to preserve the tax deductibility of contributions to the trusts.
- o The sample wording provides the trustee with an inappropriately broad scope of authority and imprudently limits the trustees liability.
- o The sample wording does not provide for the employment of a professional investment manger.
- o The sample wording inappropriately limits the grantor's ability to obtain reimbursement from the trust for decommissioning costs incurred on its own behalf and unnecessarily limits the amount of withdrawals from the trust and the corporate officials authorized to approve such withdrawals.