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Regulatory Publications Branch, DFIPS  
Office of Administration and  
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U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

(10)  
54FR 25393  
6/14/89

Re: Comments on the NRC Draft Regulatory Guide,  
"Assuring The Availability Of Funds For  
Decommissioning Nuclear Reactors"

Dear Sir or Madam:

On June 14, 1989, the Nuclear Regulatory Commission ("NRC") published in the Federal Register a notice of availability of the draft Regulatory Guide ("Reg Guide"), "Assuring The Availability of Funds For Decommissioning Nuclear Reactors," 54 Fed. Reg. at 25393. The notice indicated that the draft Reg Guide was available for public comments in the early stages of the development of a regulatory position in this area. The notice also provided that, although there is no firm deadline, public comments would be most helpful if received by August 4, 1989. On behalf of the Utility Decommissioning Group ("Group"),<sup>1</sup> we submit the following comments on the draft Reg Guide.

- 1/ The members of the Utility Decommissioning Group are: Arkansas Power & Light Company; Carolina Power & Light Co.; Duke Power Company; Edison Electric Institute; Florida Power & Light Company; GPU Nuclear Corporation; GPU Service Corporation; Jersey Central Power & Light Company; New England Power Service Company; Northeast Utilities; Pacific Gas and Electric Company; Southern California Edison Company; System Energy Resources, Inc.; TU Electric; Virginia Power; and Yankee Atomic Electric Company. Public Service Company of Colorado also joins in these comments.

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## I. General Comments

### A. Scope of Comments

These comments are submitted on behalf of 10 C.F.R. Part 50, nuclear power reactor licensees. Although we are aware that the scope of the Reg Guide also includes nuclear test/research reactor licensees, we express no views on the Reg Guide as it pertains to these facilities. In addition, the Group is also preparing editorial and technical comments to be submitted as a supplement to these comments.

### B. Timing of Reg Guide Issuance

Issues: The Staff has informally indicated that it does not expect the final Reg Guide to be published until the early spring of next year. This publication date for the final Reg Guide may not provide guidance in sufficient time to enable licensees to complete and submit their Decommissioning Funding Plans by July 26, 1990.

Group Comments: Given the potential hardships created by this publication schedule, the Staff should pursue expeditious issuance and provide notice to all licensees that it will be available for consultation to provide informal guidance on issues that may arise pertinent to the completion of the 1990 submittal. The Staff should also note, in the final Reg Guide, that due to the timing of the necessary guidance, reasonable licensee efforts to meet the July 26, 1990, deadline will be a basis for a schedular exemption from the rule.

Recommended Changes: The Group suggests the Staff issue a letter to all licensees stating that:

At this time the Staff anticipates the final Regulatory Guide will be published in the early spring of 1990. The Staff is aware that this timing could produce hardships for licensees preparing the Decommissioning Funding Report required by the rule to be filed by July 26, 1990. The Staff will, however, be available for consultation with licensees regarding any issues requiring clarification for the completion of the licensee's Decommissioning Funding Report prior to the publication of the final Regulatory Guide.

### C. Effect of the Reg Guide

Issues: A Reg Guide represents Staff regulatory positions and is issued in the form of "guidance." As such, the underlying

regulation, here the decommissioning rule, is controlling. A Reg Guide generally represents only one interpretation of the rule that the Staff finds acceptable. For example, the Commission has stated that "[t]hrough regulatory guides" licensees "are given guidance as to acceptable methods for implementing" the Commission's regulations. "However, [licensees] are free to select other methods to achieve the same goal." Consumers Power Company (Big Rock Point Nuclear Plant), 17 NRC 562, 567, n. 7, ALAB-725 (1983).

This Reg Guide involves an area of regulation, *i.e.*, utility financing, in which other agencies have important functions. There should be greater recognition in the Reg Guide of the intent to provide only guidance and to avoid impacting ratemaking activities. As the Commission has noted in the Supplementary Information with the rule, "[t]he rule, and the NRC's implementation of it, does not deal with financial ratemaking issues . . . [because] [t]hese matters are outside NRC's jurisdiction and are the responsibility of the State PUC's and FERC." 53 Fed. Reg. at 24038, col. 2.

Group Comments: The Staff should note in the final Reg Guide that licensees are free to suggest other interpretations for Staff review and that, for utility licensees, there is no intent to enter into the exclusive jurisdictional areas of ratemaking authorities, including the establishment of rate schedules. To this end, the Staff should expand in the final Reg Guide its statement of intent to provide "guidance" in the Reg Guide.

Recommended Changes: After the third full paragraph in the "Introduction" section, the Staff should include new paragraphs stating that:

This Reg Guide addresses the decommissioning of nuclear power reactors and nuclear test/research reactors. Certain provisions herein address matters not of regulatory concern for the NRC with respect to electric utility power reactor licensees because detailed economic regulation is a matter of regulation for ratemaking authorities. As a guidance document, the provisions below are not intended to be restrictive or to represent binding requirements. Rather, they represent one interpretation of the decommissioning rule that the Staff finds generally acceptable.

The Staff recognizes that other interpretations may be necessary to comply with economic regulations and intends to provide the maximum flexibility possible under the rule to accommodate such requirements. Licensees are thus free to suggest different interpretations for Staff review. In the event a provision in this document conflicts with the text of the final rule, the rule would control.



D. Scope of the Reg Guide

Issues: The draft Reg Guide defines the term "nuclear facilities" to include the "site, buildings and contents, and equipment associated with any NRC-licensed activity." Reg Guide at 2. (Emphasis supplied.) However, the final decommissioning rule applies only to those activities necessary to reduce residual radioactivity to "unrestricted use" levels. See 53 Fed. Reg. at 24019, col. 1; and 24021, col. 2.

Group Comments: The scope of these terms should be clarified. The Staff has informally acknowledged that it did not intend for the guidance to expand the scope of decommissioning activities required in the rule. The final Reg Guide should be modified to be consistent with the rule.

Recommended Changes: The opening paragraph in the "Discussion" on page 2, should be revised as indicated below:

"Decommissioning means to safely remove nuclear facilities from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license. As used in this context, the term 'nuclear facilities' refers to **the contaminated components of the site, buildings and contents, and equipment associated with any all NRC-licensed activities within the scope of 10 C.F.R. § 50.75.**"

E. Potential Conflicts With Section 468A

Issues: The Commission has noted that the deductions available through Section 468A of the Internal Revenue Code ("IRC") are important to reduce the financial burdens of the decommissioning rule. See 53 Fed. Reg. at 24033, col. 3. The clarifications requested above (see Section "C") regarding the definition of decommissioning activities are also important to avoid potential conflicts with the scope of acceptable decommissioning activities for purposes of Section 468A. Any use of funds for additional purposes could invalidate the qualified status of the funds and eliminate the current income tax deductions available through Section 468A.

Group Comments: The Staff should include in the final Reg Guide a statement explaining that its guidance is not intended to conflict with Section 468A of the IRC.

Recommended Changes: The Staff should include a statement in the final Reg Guide, after the last sentence in the paragraph suggested in Section C of these comments, as follows:



The income tax deductions available through compliance with Section 468A of the Internal Revenue Code are important to reduce the financial burdens of the decommissioning rule. Accordingly, the scope of guidance herein on "decommissioning activities" is not intended to conflict with the scope of decommissioning activities addressed by Section 468A.

#### F. Decommissioning Funding Alternatives

Issues: The draft Reg Guide is intended to provide financial assurance guidance for licensees contemplating use of any of the decommissioning funding options described in the rule. Reg Guide at 2. However, the draft Reg Guide primarily addresses the External Sinking Fund mechanism. This result follows from the NRC's conclusion that prepayment, surety bonds and insurance are currently non-viable funding alternatives. See 53 Fed. Reg at 24034, col. 1. However, at some point this situation may change. Accordingly, general guidance on the Staff's intent regarding consideration of those alternatives should be provided.

Group Comments: The Staff should recognize in the final Reg Guide that considerations peculiar to the prepayment, surety, or insurance options are best left for case-by-case resolution in view of the current likelihood of their use.

Recommended Changes: After the last full paragraph on page 2, at the end of the introduction to Section B in the draft Reg Guide, the Staff should include an additional paragraph as follows:

The flexibility of the decommissioning rule arises from the inclusion of multiple decommissioning methods and multiple funding mechanisms for these methods. The Supplementary Information with the final rule indicated that some of these options are probably not currently viable, but are nevertheless not prohibited from consideration. This guidance reflects the recognition of the current unavailability of some of these options, and accordingly addresses the more feasible alternatives in greater detail. This does not indicate that licensees should not consider other alternatives as it becomes feasible to do so. The Staff will review licensees' plans to use any such alternatives on a case-by-case basis as they are presented for review.

#### G. Criteria Used For Choice of Alternative

Issues: The Supplementary Information with the final rule noted that the NRC intended to provide criteria for licensees to use in choosing among the decommissioning alternatives, see 53

Fed. Reg. at 24021, and that this information would be provided in future Reg Guides. Id. at 24022, col. 1. For clarity, the Staff should address the availability of this guidance in the final Reg Guide.

Group Comments: The final Reg Guide should indicate where additional NRC guidance related to decommissioning may be found in other Reg Guides or NRC materials.

#### H. Waste Disposal Requirements With DECON

Issues: The availability and timing of the decommissioning alternatives relies to some degree on the availability of adequate capacity for disposal of radioactive wastes. See 53 Fed. Reg. at 24040, col. 3; 24041, col. 1. For instance, the final rule indicates that if insufficient disposal capacity were available for a licensee to complete DECON, the decommissioning process could be delayed. See id. at 24021, col. 3. In preparing license termination cost estimates, the availability of waste disposal capacity could impact the overall costs and schedule of terminating operations. The impact of the availability of waste disposal options on decommissioning funding is not clear in the Reg Guide.

Group Comments: The Staff should clarify that on-site spent fuel storage costs, even for extended periods following termination of operations, including where off-site disposal capacity is unavailable, need not be included in decommissioning costs. Further clarification should state that on-site ISFSI facilities are included within the definition of "on-site spent fuel storage" facilities. The Staff should also clarify the scope of "spent fuel removal" activities excluded from the rule.

In addition, the Staff should acknowledge that the actual date of adequate disposal capacity does not impact decommissioning planning at this point. Accordingly, licensees need not account for this factor in their Decommissioning Funding Plans. The Staff should further indicate the assumptions acceptable to it regarding the date when adequate low-level waste disposal capacity will be available. The final Reg Guide should also provide that the NRC's findings in its "Waste Confidence" rulemaking are acceptable to determine the availability date of spent fuel disposal capacity.

Recommended Changes: The Staff should modify Position 1.4.2, by changing the second sentence therein, as follows:

"... the decommissioning cost. Also, This includes of removal and disposal costs for spent fuel disposal, and on-site spent fuel storage costs ~~the-spent-fuel-itself-should-not-be~~



included because these are considered an operational cost and are covered by other regulatory provisions (e.g., paragraph 50.54(bb)). These storage costs need not be included, even for extended periods following termination of operations while approved disposal capacity is unavailable. Spent-fuel removal and storage costs include all defueling costs, as well as costs associated with storage in an on-site ISFSI. However, the cost of removal and disposal of facilities involved in onsite storage of spent fuel should be included as part of the decommissioning cost."

Licensees may assume, for purposes of estimating the date of spent fuel shipments offsite, that storage capacity will be available in accordance with the most recent update of the "Waste Confidence" rulemaking, or otherwise in accordance with the licensee's contract with DOE for disposal of spent fuel. Licensees need not address the potential issue of unavailability of high-level waste disposal capacity in Decommissioning Funding Plans. Licensees also need not address the potential unavailability of low-level waste disposal capacity in Decommissioning Funding Plans.

A conforming amendment should also be made to the last sentence in Position 1.4.5 as follows:

". . . costs of fuel storage during the period, if any occur, should need not be included . . ." Id. at 12.

#### I. Multiple Nuclear Facilities On Site

Issues: The Supplementary Information to the final rule indicates that the presence of "other nuclear facilities at the site" could provide sufficient reason to deviate from the limitations in the rule concerning the storage period (50 years) and use of the ENTOMB alternative. See 53 Fed. Reg. at 24023. These changes, perhaps not an apparent option until later in a plant's life, could alter the original cost estimate for decommissioning. For example, an extension to a much longer SAFSTOR period could result in modified costs because of further decay of radioactivity and/or providing an opportunity to coordinate decommissioning activities with the other facility.

Group Comments: The final Reg Guide should indicate that revisions to cost estimates resulting from changes in decommissioning plans because, for instance, of the existence of additional facilities on site, will be permitted at the time plans are altered. Further, the Staff should indicate that an on-site ISFSI is considered another "nuclear facility" for these purposes.



Recommended Changes: These issues should be discussed in a new paragraph to be added at the end of Position 1.4.6, which would state as follows:

The presence of "other nuclear facilities on site" could justify altering decommissioning plans such as by extending the storage period. The funding adjustments for any changes in cost estimates resulting from revised decommissioning plans will be evaluated on a case-by-case basis at the time of such revisions. The presence of an on-site ISFSI is considered an additional "nuclear facility" for these purposes.

J. External Sinking Fund - Rates of Collection

Issues: In suggesting that annual deposits should be "at least equal to the total amount remaining to be accumulated, divided by the remaining years of the license", the draft Reg Guide introduced what appears to be a new "level" funding requirement that is not in the rule. See Position 2.4.5 [sic., 2.2.5], Reg Guide at 16.

Group Comments: The Supplementary Information to the final rule clearly states that issues such as the "rate of collection" are matters outside the NRC's jurisdiction. See, e.g., 53 Fed. Reg. at 24031, col. 1. The final Reg Guide should acknowledge this jurisdictional limitation. Further, the Staff should indicate that mathematically precise or "levelized" decommissioning funding accumulation rates need not be used. Rather, the Reg Guide should reflect the underlying concern that the accumulation of required funds by the time of termination of operations should be accomplished without undue reliance upon unreasonable "back-loading" or "balloon payments."

Further, the Reg Guide should indicate that if in the course of collecting funds a licensee has accumulated significantly greater decommissioning funds than would result from a reasonable rate of accumulation, then it may reduce its collections until the funds more closely approximate a reasonable level at that particular time. Likewise, if a licensee was unreasonably behind in collections, the licensee would be expected to increase collections appropriately.

The Reg Guide should also provide guidance that a significant deficit in accumulated funds could be made up over a reasonable time. A licensee in such a deficit situation need not fund the difference with shareholder dollars, but could proceed through ratemaking to increase collections to resolve the issue.

Recommended Changes: Position 2.4.5 [sic] should be modified in the final Reg Guide, first by correcting its

designation to Position 2.2.5. The text of this Position should be modified as follows:

"Annual deposits in an external sinking fund, including projected earnings, ~~should be at least equal to the total amount remaining to be accumulated, divided by the remaining years of the license~~ should be calculated to provide for the accumulation of at least the 'certification amount' specified in 10 C.F.R. § 50.75(c)(1) by the time of termination of operations without undue reliance upon unreasonably escalated collection rates (in constant dollars) as termination of the operations approaches."

Mathematical precision is not required for fund accumulation rates. If during the course of collecting funds a licensee has accumulated significantly greater decommissioning funds than anticipated, and would be overfunded if contributions were continued at the previous level, then it may reduce its contributions until the funds more closely approximate an appropriate level. Likewise, if a licensee is significantly behind in collections, increased contributions should be used to make up the deficit. A reasonable time will be accorded to make up any deficit, consistent with obtaining appropriate rate relief to increase collections.

#### K. External Sinking Funds - Amortization

Issues: The draft Reg Guide introduced a provision for "amortiz[ation] over the life of the reactor" that is not in the rule. Reg Guide at 4. This conflict should be resolved in the final Reg Guide.

Group Comments: The Staff should delete the "amortization" guidance to deal with future inflation. The rule requires only adjustments for "past inflation." Likewise, a conforming amendment should be made by deleting the provisions in Position 2.1.5 concerning reporting of amortization adjustments. Id. at 15. Finally, the text in Position 1.2 that suggests the use of amortization to calculate future inflation for "rate-making purposes" should also be deleted. Id. at 8. Although licensees should be free to include cost projections and reasonable escalation factors for future earnings and costs, the Reg Guide should not dictate how these factors should be included in ratemaking.

Recommended Changes: The description of External Sinking Funds in sub-paragraph 3 of Section B.2. on page 4 of the draft Reg Guide, should be modified to delete the amortization provisions as follows:



~~" . . . for prepayment but-which-are-amortized-over-the  
remaining-operating-life-of-the-reactor; for non-electric-utility.  
. . ."~~

The second sentence in Position 2.1.5. should be deleted as follows:

~~" . . . Position 1.5). Adjustments-to-the-amortization-for  
the-funding-method-should-be-made-at-least-once-every-5-years  
(see-Regulatory-Position-1-5)-and-reported-to-the-NRE-along-with  
the-basis-for-such-changes."~~

The first full paragraph on page 8 of the draft Reg Guide, in Position 1.2, should be deleted. The paragraph begins with the words "Because this formula..." and ends with "...to reflect inflation."

#### L. Trust Fund Management

Issues: The definition of "external sinking fund" in Appendix A of the draft Reg Guide and in the final rule indicates that such a fund must have its assets "segregated from licensee assets and outside the licensee's administrative control." Id. at A-1; 53 Fed. Reg. at 24050, col. 2. The Staff's interpretation of the meaning of these terms is important to a licensee's establishment of appropriate trusts to maintain its decommissioning funds.

Group Comments: The Reg Guide should address the degree of "externality" expected for such funds. Specifically, guidance on the meaning of the terms "segregated from" and "outside of the licensee's administrative control" should be supplied. The Staff should state that the intent of these conditions is to protect the integrity of the trust fund. The Staff should also confirm its previous informal indications that licensees may be involved in the management of trust investments, to the extent allowed by applicable trust laws. The Staff should further confirm that the "externality" requirement should not be interpreted to require that a decommissioning fund be maintained as a separate taxpaying entity.

Recommended Changes: The definition for "external sinking fund" in Appendix A should be modified by adding the text below:

The conditions "segregated from" and "outside the licensee's administrative control" are intended to assure that the integrity of decommissioning trust funds -- especially insulation from creditors -- will be maintained. A case-by-case "reasonableness" evaluation will be applied to licensee compliance with these provisions. Further, "segregation from licensee assets" for an



external fund does not require that it be a separate taxpaying entity. In addition, "outside the licensee's administrative control" allows licensee involvement in the management of the Fund investments to the extent allowed under State trust law. The Staff recognizes that licensees have legitimate interests and responsibilities in assuring appropriate investment strategies for such funds and closely monitoring the progress of the investments.

M. Investing Fund Assets

Issues: The last sentence of the definition of "external sinking fund" creates the potential for conflict with other positions in the draft Reg Guide. This definition provides that, among other things, "investment grade corporate securities" should be used. Reg Guide at A-1. This statement appears to go beyond the rule, and, in fact, does not square with permissible investments under Section 468A of the Internal Revenue Code.

Group Comments: The final rule does not require the use of "investment grade securities". Further, not only does the draft Reg Guide not define this term, but a very real potential for conflict exists with Position 2.2.4 which states that any trust investment complying with the instructions of a state PUC or the FERC will be acceptable to the NRC. Id. at 16.

The Staff should amend this provision in the final Reg Guide. The Staff should also reiterate the NRC's intent that the Reg Guide not conflict with Section 468A of the IRC. The final Reg Guide should state that investments into government, municipal or corporate bonds or preferred or common stocks are acceptable.

Finally, the phrase "or with explicit instructions from a utility's state" PUC in Position 2.2.4 should be modified by deleting the term "explicit instructions." Id. It cannot be assumed that all state PUCs will provide "explicit guidance" on these matters, because they may provide other forms of direction.

Recommended Changes: The third sentence of the text of the current definition of "external sinking fund" should be modified as follows:

". . . The external sinking fund can be in the form of a trust or escrow account using . . . , or deposits of investment-grade corporate bonds or preferred or common securities."

Position 2.2.4 should also be modified as follows:

". . . Section 468A or with explicit-instructions any guidance that is provided from a utility's public utility commission(s) . . . ." This includes investments into corporate, government, municipal or corporate bonds and common or preferred stock.

#### N. Future Inflation

Issues: Position 1.5.1 addresses inflation adjustments to "certification amounts." Id. at 13. However, the distinction is unclear between the adjustments necessary when licensees "certify" funding in the 10 C.F.R. § 50.75(b) minimum threshold amount, as opposed to a site-specific cost estimate amount.

Further, this Position addresses the inflation adjustment formula in 10 C.F.R. § 50.75(c)(2), which addresses "past inflation." The Reg Guide also states, however, that "[e]stimates of future inflation should bear a reasonable relationship to recent (i.e., within 10 years) economic performance." Id. The decommissioning rule does not require consideration of future inflation. Position 1.5.3 also provides that adjustments to the certification amount discussed in Position 1.5.1 "should be made at least once a year . . . ." Id. (Emphasis supplied.)

Group Comments: The final Reg Guide should clarify what adjustments are required when a licensee certifies that funds in the threshold amount specified in 10 C.F.R. § 50.75(b) will be available when needed, as opposed to funds in the amount of a site-specific cost estimate. Further, because the final decommissioning rule only requires adjustments for "past" inflation, the provision regarding "future" inflation should be deleted in the final Reg Guide. As the rule further requires the certification amount to be "adjusted annually," the provision indicating more frequent adjustments should also be deleted. See 10 C.F.R. § 50.75(b).

Recommended Changes: Position 1.5.1 should be modified as follows:

"The effect of inflation on the estimated costs should be determined annually. Thus, all licensees should annually assess the adequacy of funding levels against the 10 C.F.R. § 50.75(b) threshold amount, ~~For those using certification, the licensee is to which should be~~ adjusted the certification amount using the formula in paragraph 50.75(c)(2) of 10 CFR Part 50 (see Regulatory Position 1.2). In addition, ~~For~~ licensees using site-specific cost estimates, new cost estimate studies may be performed periodically to assure that the estimate exceeds the Section 50.75(b) amount. However, such studies need not be



performed if the funding amount exceeds the Section 50.75(b) amount. As an alternative to performing new site-specific cost estimate studies, Alternatively, licensees may use standard measures . . . ."

The sixth sentence in Position 1.5.1, on page 13 of the draft Reg Guide, should be deleted. It begins with the words "Estimates . . ." and ends with ". . . performance." The seventh and final sentence should delete its reference to "future inflation."

Position 1.5.3 should also be modified by deleting the phrase "at least".

#### O. The Decommissioning Funding Plan

Issues: The draft Reg Guide does not address the expected form or content of the Decommissioning Funding Plan to be submitted on July 26, 1990. Certain parameters related to that Plan are not, but should be, addressed in the Reg Guide.

Group Comments: The final Reg Guide should acknowledge that the focus of the Decommissioning Funding Plan to be submitted by July 26, 1990, is to provide reasonable assurance that decommissioning funds, in the certification amount, will be available for decommissioning when needed. Accordingly, the Staff should indicate that nuclear power reactor facility licensees that have ceased operations prior to the July 27, 1988, effective date of the rule need not submit a Decommissioning Funding Plan.

The Staff should also confirm that licensees need not have begun to accumulate funds toward the certification amount by July 26, 1990. Indeed, the rule does not direct any specific timing for commencing Fund accumulation. Rather, it is noted that the purpose of the Decommissioning Funding Plan to be submitted in 1990 is to demonstrate reasonable assurance that a licensee will ultimately accumulate the necessary funds for decommissioning, not that it has already begun to do so in the prescribed manner by a certain date.

The Staff should further explain that information on any amounts collected in excess of that required for the certification amount need not be submitted until the Preliminary Decommissioning Plan is filed. The Staff should also state whether such licensees will be required to perform the "periodic adjustments" addressed in Position 1.5.3.

Finally, the Staff should include in the final Reg Guide a reasonably brief description of the scope, form and content of



information expected in the Decommissioning Funding Plan. The Reg Guide should reflect that these submittals would not necessarily be overly detailed or extensive. This description should be set forth in a separate form in the final Reg Guide.

Recommended Changes: The title of Position 1.1 should be changed to **Funding Requirements for the Decommissioning Funding Plan**. The first paragraph of Position 1.1.1 should be changed as follows:

"For electric utility applicants and licensees, the initial certification amount of funds . . . 50.75(c)(1)." This amount should be adjusted annually for inflation as required in the rule. The purpose of the Decommissioning Funding Plan is to provide reasonable assurance that licensees have a workable plan to accumulate funds in the adjusted 10 C.F.R. § 50.75(c)(1) certification amount by the anticipated time of termination of operations, not that licensees have already begun to accumulate those funds when the Plan is filed. Also, licensees that have ceased operations prior to the July 27, 1988, effective date of the rule need not submit a Decommissioning Funding Plan.

The Staff should also include the following paragraph, to be located after the last paragraph currently in Position 1.1.1, as follows:

A description of the expected detail and scope of information to be included in the Decommissioning Funding Plan to be filed by July 26, 1990, is provided at page . . .

P. Technological Changes

Issues: The draft Reg Guide indicates that "technological changes" must be considered in updating cost estimates. Id. at 13, Position 1.5.2. Position 1.5.3 indicates that adjustments for such "technological changes" should be made "once every 5 years . . . ." Id. These provisions appear to go beyond the rule.

Group Comments: No requirement for technological updates, prior to the filing of the Preliminary Decommissioning Plan pursuant to 10 C.F.R. § 50.75(f), exists in the rule. The final Reg Guide should note this limitation. Further clarification of the definition of "technological changes" should also be provided for use when such factors are to be considered. Finally, the adjustment schedule for technological changes, after the Section 50.75(f) period, should be on an "as provided in the rule" basis, instead of every 5 years.

Q. Multiple Ownership

Issues: Position 2.1.1. provides that, for whatever funding method is used, multiple owners may pool decommissioning funds for the same facility. If they do, the guidance also requires "a clear indication of funding provisions made by each licensee." Id. at 14. No indication is given regarding pooling of funds for different reactors.

Group Comments: The Staff should clarify whether decommissioning funds may be pooled for different reactors. For instance, it is clear that if parties A, B and C jointly own facility X, they may pool their funds for that facility. However, it should be clarified whether, if parties A, B and C jointly own both facilities X and Y, the decommissioning funds of the parties can be pooled for both facilities.

The Staff should describe the form, content and level of detail expected from each party in a multiple ownership situation for the various decommissioning plans. The Staff should confirm that extensive detail is not required for the Decommissioning Funding Plan, and that multiple owners may combine their information into one report, even if different funding methods are used. The primary concern should be that the total of funds to be provided by all owners equals at least the certification amount. Finally, the Staff should clarify that such approaches are acceptable for funding information to be provided in subsequent decommissioning plans.

R. Projected Earnings

Issues: Position 2.4.5 [sic] indicates that the annual adjustments to accumulated decommissioning funds may take into account "projected earnings" on accumulated funds. Id. at 16. Guidance is not provided as to what levels of "projected earnings" may be assumed.

Group Comments: The final Reg Guide should state that future earnings on fund amounts may be projected at a reasonable rate, even if in excess of the anticipated rate of inflation.

Recommended Changes: A new sentence should be added to the end of Position 2.4.5 [sic] which states that:

Earnings rates maybe reasonably projected, and are not limited by the anticipated rate of inflation that may be used.

S. Guarantor Qualifications

Issues: Position 2.3.3. sets basic qualification requirements for financial institutions serving as guarantors. Id. at 17. However, further guidance should be provided with respect to the Circular 570 listing provision.

Group Comments: For example, the Reg Guide should provide that in the event that a surety company loses its Circular 570 listing, a reasonable period of time will be afforded to address that circumstance. Further, Circular 570 status assures that the surety company has been certified to do business by a federal regulatory body. Any licensing requirement in the state of the facility is thus unnecessarily restrictive and should be deleted.

Recommended Changes: The first sub-paragraph in Position 2.3.3. should be modified as follows:

" . . . edition of Circular 570, ~~be-licensed-to-transact business-in-the-State-in-which-the-bond-is-executed,~~ and have . . . ."

T. Lines of Credit

Issues: Position 2.3.4 is vague in stating that a lender providing a line of credit need only provide a "written commitment to provide funds as necessary for decommissioning." Id. (Emphasis supplied.)

Group Comments: This ambiguity raises the potential for conflict between what licensees, states and the NRC consider "necessary" decommissioning expenditures within their respective jurisdictions. The Staff should clarify the scope of acceptable expenditures.

Recommended Changes: Position 2.3.4 should be modified as follows:

"If lines of credit are used, the applicant or licensee should obtain from the lender a written commitment to provide funds disbursements as-necessary for all decommissioning expenditures required by the decommissioning rule."

U. Final Cost Estimates

Issues: Position 1.6 on "Final Decommissioning Cost Estimates" is vague with respect to consideration of "existing experience" in the industry.



Group Comments: The final Reg Guide should indicate the nature of the "existing experience in the industry" contemplated by this provision.

Recommended Changes: A sentence should be added to the final point in Position 1.6, as follows:

Such experience would be derived from already or substantially completed decommissioning of other facilities, to the extent practical.

## II. TRUST FUNDS

### A. Scope of Guidance

Issues: The scope of the guidance contained in Appendix B of the draft Reg Guide that is applicable to electric utility power reactor licensees is unclear. A number of the provisions in the sample guidance documents, and in particular, the Trust Fund, are apparently not intended for 10 C.F.R. Part 50 power reactor licensees. The final Reg Guide should clearly indicate that specific provisions in those documents do not apply to electric utility power reactor licensees.

Group Comments: The Staff should initially reiterate that the "Recommended Wording" for the draft financial assurance funding mechanism documents contained in Appendix B is only "guidance," and represents only one interpretation of the requirements of the rule. The Staff should thus clearly state that licensees are free to propose their own agreements for Staff review. (See Section I.C. above.) Similarly, a conforming amendment should be made to Positions 2.2.1 and 2.3.1 to clearly state that use of the recommended documents is discretionary.

In any event, for power reactor licensees the final Reg Guide should use recommended financing instruments in Appendix B that incorporate changes from those set out initially in NUREG-1336, "Interim Guidance on the Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 C.F.R. Part 30, 40, and 70," (October 1988), to reflect more appropriate applications to those entities. For example, no prior approval of or frequent notifications of withdrawals should be included. The Reg Guide should further state that the intent of a decommissioning trust fund being "outside the licensee's control" is to assure the protection of the fund from, among other challenges, access by creditors in the event of insolvency. To this end, an electric utility licensee is free to use any trust fund and to interact with or manage the

fund in a way that is permitted under trust laws applicable to the utility and provides adequate protection.

Some specific comments follow on the provisions of the trust form, which are intended to improve its usefulness for electric utility licensees, should they choose to adopt one or more of such provisions.

Recommended Changes: Position 2.2.1 should be modified in the final Reg Guide as follows:

"An applicant . . . paragraph 50.75(c) should ~~use~~ refer to the recommended wording ~~for-these-methods-contained~~ in Appendices B.1, B.2, and B.3, respectively, for guidance when preparing its Fund management instruments." These provisions represent those that the Staff finds generally acceptable, but licensees are free to suggest alternatives for Staff review.

A similar revision should also be made to Position 2.3.1.

#### B. Definitions

Issues: The Staff should clarify the definition provided in Appendix A for the term "trust fund." The definition, as well as Position 2.1.2 in the draft Reg Guide, indicates that a trust fund must contain "assets at least equal to the cost of decommissioning." Id. at A-3. This raises several potential issues that should be resolved in the final Reg Guide.

Group Comments: The final Reg Guide should state that a trust fund could be provided for the "certification amount" specified in 10 C.F.R. § 50.75(c)(1), which is a threshold figure not necessarily intended to precisely represent the cost of decommissioning.

Further, the recommended wording for the trust agreement, Appendix B.3.1, indicates that a trust can be used for all or part of the required decommissioning funds. This provision should be further clarified to indicate that it is intended to address the circumstance where additional funding is provided by other means and the trust fund contains only a portion of the total funding package.

Finally, the final Reg Guide should provide that designation of the trust fund beneficiaries (see, e.g., Section 3) may be to the Grantor or other appropriate beneficiary rather than the "NRC or state agency." There is no clear statutory basis for the NRC to act as a beneficiary and in a state that has adopted decommissioning requirements involving activities in addition to those required for NRC purposes, conflicts could



arise regarding the use of decommissioning funds if the State were the beneficiary. A conforming amendment should also be made to Position 2.4.1. Id. at 17.

#### C. Informational Requirements

Issues: Section 2 of Appendix B.3.1 appears to suggest that the trust instrument should contain the decommissioning cost estimate for the facility. Id. at B-12. Section 4 likewise appears to suggest that the trust instrument should provide a list of assets constituting the Fund. Id. Because these data will be subject to frequent adjustments, they should not be required in the trust instrument.

Group Comments: Cost estimates are not required until the Preliminary Decommissioning Plan is filed approximately five years prior to termination of operations. Moreover, cost estimates will be subject to frequent adjustments over the decommissioning period, as will the particular assets constituting the Fund. The inclusion of these data in the trust instrument would thus necessitate constant revisions to maintain its accuracy. These provisions are not supported by the rule, nor are they necessary for the NRC to verify compliance with the rule. Accordingly, the Staff should clarify that these data need not be included in the funding instruments for Part 50 licensees.

#### D. Trustee Accountability

Issue: Section 4 of the recommended trust fund agreement absolves the Trustee of all responsibility regarding the "amount of, or adequacy of the Fund . . ." Id. at B-13. Licensees may wish to require more Trustee responsibility in this regard.

Group Comments: The Staff should verify that a provision that places additional responsibility upon the Trustee is acceptable. The only limitations on this provision should be those inherent in State trust law.

Issue: Section 10 of the recommended agreement in Appendix B.3.1. would require only annual Fund valuations by the Trustee. Id. at B-15. Sections 6-9 of the agreement delegate to the Trustee virtually absolute control over the Trust funds. Licensees may also wish to modify these provisions.

Group Comments: Group members are concerned that poor Trustee management could substantially reduce the value of the Fund during the year. PUC's will expect licensees to closely monitor Trustee performance. The current instrument only

provides for a yearly report. The Reg Guide should indicate that more stringent provisions may be included.

E. Restricted Decommissioning Fund Withdrawals

Issues: The recommended trust instrument limits decommissioning fund withdrawals that may be made without prior NRC approval. Id. at B-13, Section 5. This provision should not be applicable to nuclear power reactor licensees.

Group Comments: This provision should be deleted in the final Reg Guide or indicated to be inapplicable to power reactor licensees. In any event, no more than annual reports should be contemplated for power reactor licensees, and prior NRC approval would not be required in any event.

F. Payment of Decommissioning Expenses

Issues: The final paragraph of Section 5 of the recommended trust agreement states that "[t]he Trustee shall reimburse the Grantor or other persons as specified by the NRC, or State agency, from the Fund for expenditures for required activities in such amounts as the NRC, or State agency, shall direct in writing." Id. at B-13. (Emphasis supplied.) The Staff's intent regarding this provision is unclear. The Staff's intent for the provision suggesting that the NRC must receive 30 days prior notice of a licensee's intent to withdraw funds should also be clarified. Id., Section 5.b(3).

Group Comments: The term "reimburse" could be read to indicate that the NRC intends for licensees initially to pay for decommissioning expenses out of general operating revenues, to be later reimbursed from trust fund assets. The Staff should confirm that this was not intended by deleting the word "reimburse" and replacing it with the phrase **make disbursements** to in the final Reg Guide.

The Staff should also state that disbursements may be made for all reasonable "actual costs" incurred in the decommissioning process. These would include expenses incurred before the physical decommissioning process is actually begun, such as the drafting of the decommissioning plans, performance of cost estimates, Trustee compensation expenses, legal and accounting fees as well as taxes paid by the Utility.

Finally, the provision suggesting that a licensee should provide the NRC with 30 days' prior notice of its intent to withdraw funds should be deleted. Sub-paragraphs b(1) and (2) of Section 5 assure that the funds may be withdrawn and expended



for proper decommissioning expenses. State trust law also requires proper use of trust funds. Thus, this provision would create an unnecessary burden on licensees.

G. Refunds of Decommissioning Funds

Issues: The intent of the "refund" provision addressed in Section 5 should also be clarified. Id. This would appear to address any assets remaining in the fund subsequent to termination of the license.

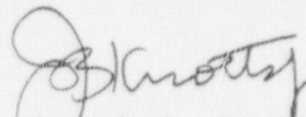
Group Comments: The Staff should state that this provision applies only to assets remaining in a trust fund after the original operating license is terminated. Thus, the Staff should clarify that no NRC discretion regarding the amount of such refunds exists, because the refund should be for the entire remaining balance.

The Staff should also define the relationship, if any, of this "refund" provision to the provisions in Section 16 regarding the delivery of remaining trust property to the Grantor upon "termination" of the trust. See id. at B-16.

III. Conclusion

The members of the Utility Decommissioning Group, on whose behalf these comments have been prepared and filed, appreciate the Staff's efforts to provide guidance in this important area, and in many respects agree with the Staff's draft Reg Guide concerning decommissioning financing. For the reasons stated above, however, the commenters request that the Reg Guide be revised and clarified as indicated herein.

Respectfully submitted,



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