

SAFETY EVALUATION REPORT

DOCKET NO.: 70-0113

LICENSE NO.: SNM-95

LICENSEE: Pennsylvania State University

SUBJECT: ANNUAL SELF-GUARANTEES FOR SPECIAL NUCLEAR MATERIALS
LICENSE SNM-95 (ENTERPRISE PROJECT IDENTIFICATION CODE:
L-2022-DFB-0000)

BACKGROUND

By letter dated December 17, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21362A738), the Pennsylvania State University (PSU) submitted its annual certification of self-guarantee (SG) for decommissioning financial assurance for Special Nuclear Material License (SNM-95). The PSU has two licenses issued by the NRC, Special Nuclear Material (SNM) License SNM-95 (Docket No. 70-0113) and License R-2 Breazeale Nuclear Reactor (Docket No. 050-0005). This safety evaluation report pertains to License SNM-95 only.

DISCUSSION

Regulatory Requirements

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 70.25, "Financial assurance and recordkeeping for decommissioning," nuclear facilities licensed under 10 CFR Part 70 are required to establish adequate financial assurance for decommissioning, decontamination, and reclamation. Section 70.25 of 10 CFR requires non-profit college and university licensees to provide reasonable assurance of available funds for decommissioning costs through an SG, to annually provide an SG agreement and pass a financial test pursuant to 10 CFR Part 30, Appendix E, "Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds For Decommissioning by Nonprofit Colleges, Universities, and Hospitals."

Staff Review of Self-Guarantee and Supporting Documentation

In its review, the NRC staff relied on the regulations set forth in Appendix E of 10 CFR Part 30 and 10 CFR 70.25, as well as the supporting NRC guidance contained in NUREG-1757, Volume 3, Revision 1, Appendix A.9.

This review was limited to the requirements set forth in Condition S-3 of License SNM-95.

The regulations in 10 CFR 70.25(f) require, in part, that the financial instrument include the licensee's name, license number, and docket number; and the name, address, and other contact information of the issuer, and if a trust is used, the trustee. Financial assurance for decommissioning must be provided by stated methods, including for nonprofit entities such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the licensee may be used if the guarantee and test are as contained in Appendix E of 10 CFR Part 30.

Enclosure

In its December 17, 2021 submittal, PSU submitted documentation to demonstrate their continued eligibility to use the self-guarantee. The submittal consisted of the following:

- An updated SG and associated Financial Test signed by the Associate Vice President for Finance and Corporate Controller
- An Independent Accountants Report and Schedule of Reconciling Amounts contained in NRC annual certification letter with amounts in the licensee's consolidated financial statements, and
- PSU's audited financial statements for the most recent fiscal year, including auditor's opinion on the financial statements

The SG agreement (ADAMS Accession No. ML21362A741) states that the guarantee was made by the Pennsylvania State University, a nonprofit university, organized under the laws of the Commonwealth of Pennsylvania, to the NRC, on behalf of the university as licensee. The PSU has full authority and capacity to enter into this self-guarantee by the bylaws of the Trustees of the Pennsylvania State University. The self-guarantee agreement is signed by Joseph J. Doncsecz, Associate Vice President for Finance and Corporate Controller of PSU.

On the basis of the review, the NRC staff has determined that the licensee has an acceptable method of financial assurance, so as to protect health and minimize danger to life or property. Therefore, the NRC staff finds that the licensee meets the requirement of 10 CFR 70.25(f), as modified by Condition S-3 of License SNM-95.

In order for PSU to qualify for use of an SG, it must satisfy the criteria found in 10 CFR Part 30, Appendix E, Section II.A.1 or A.2. The PSU's SG submission intends to demonstrate compliance with 10 CFR Part 30, Appendix E, Section II.A.1 (the "Financial Test"). The Financial Test, in pertinent part, requires that PSU have a current rating for its most recent bond issuance of AAA, AA, A as issued by Standard & Poor's or Aaa, Aa, or A as issued by Moody's.

As part of the SG submission, PSU included the identification of the Financial Test used and used the guidance in NUREG 1757, Volume 3, Appendix A, Checklist 9-B to demonstrate passage of the Financial Test.

The SG submission states that the current bond rating of the most recent uninsured, uncollateralized, and unencumbered bond issuance is AA, as issued by Standard & Poor's. The licensee's statement was compared with Standard & Poor's Global Ratings to PSU dated June 30, 2021, by PSU's independent auditor and found no exceptions (ADAMS Accession No. ML13114A070). Therefore, PSU meets the requirement of 10 CFR Part 30, Appendix E, Section II.A.1.

In addition, 10 CFR Part 30, Appendix E, Section II.C.(1) requires an independent certified public accountant of the licensee to compare the data used by the licensee 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. The accountant must evaluate the licensee's off-balance sheet transactions and provide an opinion on whether those transactions could materially adversely affect the licensee's ability to pay for decommissioning costs. The accountant must verify that a bond rating, if used to demonstrate passage of the financial test, meets the requirements of Section II.

As part of the December 17, 2021 submittal, PSU included an independent auditors' report made to the Board of Trustees of the Pennsylvania State University, University Park, Pennsylvania (ADAMS Accession No. ML21362A743). Consolidated financial statements of the Pennsylvania State University and its subsidiaries were audited. The financial statements comprise the financial position as of June 30, 2021, and the related consolidated statements of activities and cash flows for the years then ended, and the related notes to the consolidated financial statements.

The auditor noted that PSU has changed its method of accounting for leases, effective July 1, 2020, due to the adoption of Accounting Standard Codification Topic 842 (ASC 842), Leases. Auditor's opinion is not modified due to this matter. The ASC 842 defines a short-term lease as a lease with a term of 12 months or less that does not include a purchase option that is reasonably certain of being exercised ("short-term leases"). The PSU has elected, for all asset classes, the short-term lease recognition exemption provided in the standard that eliminates the requirement to recognize on the statement of financial position any short-term leases. The lease expense for these short-term leases is recognized on a straight-line basis over the lease term within operating expenses in the consolidated statement of activities, and is not considered material to the consolidated financial statements (ADAMS Accession No. ML21362A743).

The NRC staff determined that the licensee had their independent certified public accountant of the licensee compare the data used by the licensee 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. The accountant verified that the bond rating meets the requirements of 10 CFR Part 30, Section II. Therefore, the NRC staff finds that the licensee meets the requirement of 10 CFR Part 30, Appendix E, Section II.(C)(1).

Furthermore, 10 CFR Part 30, Appendix E, Section II.(C)(2) states that after the initial financial test, the licensee must repeat passage of the test and provide documentation of its continued eligibility to use the self-guarantee to the Commission within 90 days after the close of each succeeding fiscal year.

The fiscal year of PSU closes on June 30th. Under the 90-day requirement of Part 30, Appendix A, the annual certification documents are required to be submitted to the NRC by September 28th. At PSU, the Committee on Audit and Risk meets to review and accept financial statements on behalf of the Board of Trustees during October or November. The date on which the PSU Board of Trustees meets to give final approval of the financial statements varies from year to year, but such approval is generally given by November 30th.

By letter dated October 23, 2014 (Accession No. ML13325A031), the NRC staff approved an exemption to 10 CFR Part 30, Appendix E, Section II.(C)(2), allowing the licensee to submit documentation 180 days after the close of the fiscal year.

Given that the fiscal year 2021 ended on June 30, 2021, documentation to demonstrate continued eligibility to use the self-guarantee was due by December 27, 2021. The PSU submitted documentation by letter dated December 17, 2021. The PSU's license was renewed on April 24, 2018 (Accession No. ML16336A201). License condition S-3, states in part, that "Notwithstanding the requirements in 10 CFR Part 30, Appendix E, Section II.C.(2), the Pennsylvania State University shall demonstrate its continued eligibility to use the self-guarantee within 180 days of the close of the fiscal year." The NRC staff determined that

the licensee submitted the required documentation in 10 CFR Part 30, Appendix E, Section II.C.(2). PSU meets all the requirements of the Financial Test.

Part 30 of 10 CFR, Appendix E, Section III.A through G, describes the terms that are required in an SG:

- A. The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested to the Commission. Cancellation may not occur unless an alternative financial assurance mechanism is in place.
- B. The license shall provide alternate financial assurance as specified in the Commission's regulations within 90 days following 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 in effect by the licensee.
- D. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, the licensee will fund the standby trust in the amount of the current cost estimates for decommissioning.
- 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 shall notify the Commission in writing within 20 days after publication of the change by the rating service...
- F. ...A standby trust to protect public health and safety and the environment must be established for decommissioning costs before the self-guarantee agreement is submitted...
- G. Guarantor must agree that if guarantor admits in writing its inability to pay its debts generally, or makes a general assignment for the benefit of its creditors, or any proceeding is instituted against by or against the guarantor seeking to adjudicate it as bankrupt or insolvent ... then the Commission may: (1) declare that the financial assurance guaranteed by the self-guarantee agreement is immediately due and payable to the standby trust ... ; and (2) exercise any and all of its other rights under applicable law.

In its December 17, 2021 submittal, PSU provided adequate language in its terms of the self-guarantee consistent with model language in NUREG - 1757, Volume 3, Rev. 1, Appendix A.9, Checklist B.

In addition, PSU has previously submitted a standby trust agreement (STA) that has been previously approved by the NRC staff (ADAMS Accession No. ML13114A070). The STA Schedule B document reflects the current certified decommissioning costs for PSU's Part 50 and 70 licenses.

The NRC staff finds the language of the SG complies with the terms and conditions requested by NUREG-1757, Volume 3, Revision 1, Appendix A.12. Because the SG is consistent with the recommended language contained in NUREG - 1757, Volume 3, Revision 1, Appendix A.9, Checklist B, which the NRC staff has previously determined would comply with the NRC's regulatory requirements, the staff therefore finds that the proposed SG meets the requirements of 10 CFR Part 30, Appendix E, Section III.A-G.

CONCLUSION

On the basis of the NRC staff's review of the submittal as it applies to License SNM-95, and discussed above, PSU has demonstrated that: (1) its financial condition meets the requirements of 10 CFR Part 30, Appendix E, and (2) the language of the SG agreement, auditor's opinion on PSU's audited financial statements, and previously submitted and approved STA agreement are consistent with NRC guidance. Therefore, the NRC staff finds that PSU's SG and supporting documentation are acceptable and are, therefore, approved.

PRINCIPAL CONTRIBUTOR

Emil S. Tabakov, NMSS/REFS