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Draft Interim Staff Guidance: Use of the Decommissioning Trust Fund During Operations for Major Radioactive Component Disposal

Comment On: NRC-2023-0111-0001

Draft Interim Staff Guidance: Use of the Decommissioning Trust Fund During Operations for Major Radioactive Component Disposal

Document: NRC-2023-0111-DRAFT-0007

Comment on FR Doc # 2023-13093

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General Comment

See attached file(s)

Attachments

08-21-23_NRC_Comments on Draft ISG on Use of DTF

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Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Program Management, Announcements and Editing Staff

Subject: Draft Interim Staff Guidance: Use of the Decommissioning Trust Fund During Operations for Major Radioactive Component Disposal (Docket ID NRC-2023-0111)

Project Number: 689

Submitted via Regulations.gov

On June 21, 2023, the U.S. Nuclear Regulatory Commission (NRC) issued a notice in the *Federal Register* soliciting comments on the subject draft interim staff guidance (ISG) document.¹ The Nuclear Energy Institute (NEI)² is pleased to provide comments on this draft guidance on behalf of the nuclear energy industry.

NEI agrees with the NRC staff's position on the use of the decommissioning trust fund (DTF) during operations for major radioactive component (MRC) disposal and supports the issuance of guidance on the information that would assist NRC's consideration of licensee requests for exemption from the regulations related to this activity. There are more than 200 MRCs currently being stored onsite at operating reactors around the country. In certain cases, allowing licensees to use the DTF to permanently dispose of these MRCs during operation would significantly reduce the inventory of radioactive waste presently stored at these sites and create efficiencies in the decommissioning process following cessation of operations in the future, without compromising the NRC's reasonable assurance that adequate decommissioning funding will be available when needed.

Clearly, situations have emerged in recent years regarding the size and health of the DTF for some reactor sites that would warrant NRC consideration of exemption requests to allow withdrawals from the DTF for MRC disposal as these reactors continue to operate. While exemption requests are necessarily decided on a

¹ 88 *Fed. Reg.* 118,13093 (June 20, 2023)

² The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

case-by-case basis, the proposed guidance will assist licensees by providing clarity with respect to NRC's expectations when reviewing such requests. NEI encourages NRC to promptly issue this ISG and supports the inclusion of this guidance in RG 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," as part of the ongoing rulemaking for the transition to decommissioning.

NEI offers the following specific comments on the draft ISG:

The ISG states that "removal and replacement of MRCs during the operational phase is a cost of doing business." It is important to note that the disposal of removed MRCs presents a licensee with a choice between expending limited operating funds to dispose of the MRC or store it onsite until the cessation of operations when DTF can be used. In most cases, licensees have chosen to store the MRCs onsite at significant cost savings relative to disposal options so that available funds can be used to support continued safe plant operations. However, onsite storage is not without its costs, so the ability to use the DTF for immediate disposal, if certain circumstances are present, makes sense. Thus, we recommend that the description of the "status quo" in the ISG focus on explaining the regulations that create the need for an exemption, rather than making more subjective statements characterizing disposal costs (i.e., as a "cost of doing business").

The list of information included in the ISG that would assist the "...NRC staff in evaluating an exemption request..." should be viewed as a non-exhaustive list of topics that could be useful to the NRC in dispositioning licensee exemption requests. In other words, the list provided in the ISG should not be viewed by the NRC staff (or licensee) as a prescriptive, mandatory list of information that must be included in all exemption requests, nor should it limit consideration of other factors addressed in an individual exemption request that may be relevant to establishing that the requirements of 10 CFR 50.12 have been met in any given case. The information presented by the licensee should be evaluated by NRC to determine if the totality of the facts presented demonstrates that extraordinary circumstances are indeed present supporting issuance of an exemption.³

Thank you for the opportunity to provide industry's views on this topic. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



Bruce S. Montgomery

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³ The draft ISG quotes the NRC's denial of a rulemaking petition in 2008 as establishing a Commission position that "withdrawals for the disposal of MRC's would be granted only in extraordinary circumstances (73 Fed. Reg. 62222; Oct. 20, 2008). We view the Commission's statement in that denial as an interpretive statement regarding application of the exemption criteria provided in 10 CFR 50.12 "Specific Exemptions," rather than as creating an additional requirement, independent of the well-established criteria provided in section 50.12.