

October 3, 2003

Mr. James E. Wells
Director, Natural Resources and Environment
United States General Accounting Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Wells:

I would like to thank you for the opportunity to review and submit comments on the draft of the General Accounting Office's (GAO's) report entitled "Nuclear Regulation - NRC Needs More Effective Analysis to Ensure Accumulation of Funds to Decommission Nuclear Power Plants." The United States Nuclear Regulatory Commission (NRC) appreciates the time and effort that you and your staff have taken to review this topic.

GAO concludes that the NRC's analyses of funding levels of co-owners of a nuclear power plant are inconsistent with its internal guidance, the NRC does not have a method of determining whether licensees are accumulating funds at sufficient rates to pay for decommissioning, and the NRC needs to establish criteria for taking action when licensees are at unacceptable levels of funding assurance.

The NRC disagrees with GAO's first two conclusions and believes that to establish criteria for taking action when licensees are at unacceptable funding levels is secondary to its primary concern which is to assure that licensees are accumulating funds at appropriate rates. Further, in NRC's view, it is questionable whether the development of criteria to address insufficient funding levels is warranted, given the unique set of circumstances and considerations that would apply to each licensee.

Therefore, the NRC recommends that GAO state, in its report, that: (1) NRC's practice with respect to analyzing decommissioning funds where nuclear power plants have co-owners is consistent with its internal guidance; (2) the NRC has a methodology that is different from GAO's for assessing whether funds are being accumulated appropriately, and GAO's conclusions regarding sufficient accumulation of funds is based on GAO's methodology that has not been reviewed and accepted by the NRC; and (3) the NRC's practice is to review licensees who have not accumulated sufficient funds on a case-by-case basis due, in part, to the complexity and range of circumstances that may arise with any given licensee, particularly those that are subject to the jurisdiction of State regulators. Specific comments are provided on the three main GAO conclusions, as described below, and are elaborated on in greater detail in the enclosure.

- First, the GAO report states that NRC's internal guidance requires NRC to separately assess the status of each co-owner's trust funds against each co-owner's contractual obligations with other co-owners to fund decommissioning. We do not agree that the guidance requires assessment against co-owners' contractual obligations. The NRC

reviews the accumulated balances and planned future contributions of each co-owner in order to evaluate the total trust fund balance expected for each reactor. Where a nuclear power plant has multiple owners, it is the owners' collective responsibility to meet the funding requirements for the plant.

- Second, while the GAO report suggests that the NRC use a "benchmark" amount of funds that owners should have accumulated by the end of year 2000 to determine if owners are "on track" to pay for eventual decommissioning, NRC regulations do not establish intermediate benchmarking levels, but rather establish the minimum balance that must be obtained at the permanent termination of operations. The NRC has always deferred to the State public utility commission, or other regulatory authority with rate making powers, to set rates to fund decommissioning trusts. The NRC determines whether there is reasonable assurance that adequate funds will be available for decommissioning by reviewing a licensee's current fund balance, its plan for future deposits, and its projected earnings, to the extent provided by NRC regulations, consistent with and in recognition of the significant role State regulatory authorities and FERC have in setting the rates at which licensees collect decommissioning funds.
- Third, the NRC's practice is to deal with licensees who have not accumulated sufficient funds on a case-by-case basis due in part, to the complexity and range of circumstances that may arise with any given licensee, particularly those that are subject to the jurisdiction of State regulators.

The NRC will continue to evaluate its processes and policies associated with the decommissioning of power reactor facilities. The enclosed NRC comments are intended to provide a more comprehensive perspective related to the conclusions and recommendations contained in the draft GAO report.

Should you have any questions about these comments, please contact either Mr. William Dean at 301-415-1703 or Ms. Melinda Malloy at 301-415-1785, of my staff.

Sincerely,

/RA/

William D. Travers
Executive Director for Operations

Enclosure: As stated

**NRC Comments on the Draft General Accounting Office Report
“Nuclear Regulation - NRC Needs More Effective Analysis to
Ensure Accumulation of Funds to Decommission Nuclear Power Plants” (GAO-04-32)**

- 1. The GAO report states on page 4: “Although the collective status of the owners’ decommissioning fund accounts has improved since our last report, some individual owners are not on track to accumulate sufficient funds for decommissioning.”**

The NRC disagrees with GAO’s conclusion that some individual owners are not on track to accumulate sufficient funds for decommissioning because GAO’s conclusion is based on GAO’s methodology which is different from the NRC’s and has not been reviewed and accepted by NRC.

The NRC recommends that GAO state, in its report, that NRC has a different methodology than GAO for assessing whether an owner is “on track.” The NRC’s methodology with respect to licensees who are authorized to accumulate funds over time assesses the reasonableness of the collection schedules proffered by licensees by weighing several factors such as the current fund balance, the licensee’s plan for future deposits, and the projected earnings to the extent provided by NRC regulations, consistent with and in recognition of the significant role State regulatory authorities and FERC have in setting the rates at which licensees collect decommissioning funds.

- 2. On page 5, the GAO report states: “. . . contrary to NRC’s internal guidance, for the plants with more than one owner, NRC did not separately assess the status of each co-owner’s trust funds against the co-owner’s contractual obligation to fund decommissioning.”**

The NRC does not agree that its assessment of plants is contrary to NRC’s internal guidance. The NRC review process for decommissioning trust fund assurance does, in fact, incorporate the information regarding each licensee’s amortization schedule, where multiple owners per license exist, and where such information for each licensee has been submitted individually (in some cases, a lead licensee will report information for all co-owners). The phrase “for its share of the facility” as taken from page 11 of NUREG-1577, Rev. 1, “Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance,” only reflects that an individual co-owner should report its own information (absent other arrangements for a lead licensee to report on behalf of the other co-owners), and is not obligated to provide information for other co-owners. The phrase does not indicate that the NRC must analyze each co-owner’s decommissioning funds with regard to its private contractual obligations. The NRC does not separately assess the status of each co-owner’s decommissioning funding against the co-owner’s private contractual obligation to fund decommissioning.

While the NRC recognizes that private contractual arrangements among co-owners exist, the NRC's primary concern is that on a plant basis, there are adequate funds available from the licensees of the plant on a collective or aggregate basis. The NRC reserves the right, in highly unusual situations where adequate protection of public health and safety would be compromised if such action were not taken, to consider imposing joint and several liability on co-owners for decommissioning funding when one or more co-owners have defaulted. The NRC's practice is consistent with this policy.

The NRC recommends that GAO revise its report to state that the staff's practice in analyzing decommissioning funding for plants with multiple owners is consistent with its internal guidance.

3. **On page 6, the GAO report states: “. . . NRC has not established criteria for responding to any unacceptable levels of financial assurance. Accordingly, we are recommending that NRC develop and use an effective method for determining whether owners are accumulating funds at sufficient rates and establish criteria for responding to unacceptable levels of financial assurance.”**

The NRC disagrees with GAO's finding that the NRC has not developed and used a method of determining whether owner utilizing sinking funds are accumulating funds at sufficient rates. The NRC has a method which assesses the reasonableness of the collection schedule by weighing several factors. Therefore, the NRC recommends that GAO revise its report to state that the NRC has a method for determining whether owners are reasonably accumulating sufficient funds. If it is determined that unacceptable levels of financial assurance exist, the NRC will immediately seek licensees' plans to provide acceptable funding mechanisms, review those plans on a case-by-case basis in light of the specific circumstances involved, engage in discussions with relevant State regulators, and issue orders as necessary and appropriate. Beyond the general activities, the NRC has not established criteria for responding to unacceptable levels of financial assurance nor do we believe that such a criteria is worthwhile given the complexity and range of circumstances that may arise with any given licensee, particularly those who are subject to jurisdiction of State regulators.

4. **On page 10, the GAO report includes a section entitled “Several Owners Are Not Accumulating Sufficient Funds for Decommissioning Their Plants.”**

The NRC analyzed a sample of licensees in 2001 to determine whether they were accumulating sufficient funds for decommissioning their plants. Based on the sample, the NRC did not find any owners who were not accumulating sufficient funds. The NRC recognizes that GAO's conclusions are based on GAO's own method of analysis, however, that method of analysis has not been accepted by the NRC.

Therefore, the NRC recommends that GAO clarify its report to state that its conclusion that several owners are not accumulating sufficient funds is based on a GAO methodology or criteria that has not been accepted by the NRC. The NRC further recommends that GAO acknowledge in its report that there may be other acceptable methodologies or criteria to determine whether adequate funds are being collected that could yield different conclusions, particularly since there are many variables that reasonably can be incorporated into a given methodology.

5. **On page 16, the GAO report states: “They [NRC official] also stated that NRC’s regulations do not prohibit each co-owner from being held responsible for decommissioning costs even if these costs are more than the co-owner’s individual ownership share. However, assessing the adequacy of decommissioning costs on plant-wide basis is not consistent with the industry view, held by most plant owners, that each co-owner should be limited to its pro rata share of decommissioning expenses. . . .”**

The NRC recognizes the existence of licensee arrangements via private contracts where licensees are responsible for decommissioning costs in proportion to their ownership interests, and does not object to these private contractual arrangements. However, the NRC reserves the right, in highly unusual situations where adequate protection of public health and safety would be compromised if such action were not taken, to consider imposing joint and several liability on co-owners for decommissioning funding when one or more co-owners have defaulted. Therefore, the GAO should revise its report to clarify that while there are a variety of industry practices and views, the NRC’s primary intent is assuring the collective accumulation of decommissioning funds.