

June 12, 2001

MEMORANDUM William D. Travers  
TO: Executive Director for Operations  
FROM: Annette L. Vietti-Cook, Secretary **/RA/**  
SUBJECT: STAFF REQUIREMENTS - SECY-01-0075 - DENIAL OF PETITION TO AMEND FINANCIAL ASSURANCE REQUIREMENTS FOR DECOMMISSIONING NUCLEAR POWER REACTORS (PRM-50-70)

The Commission has approved the staff's proposal to deny the petition for rulemaking to amend the financial assurance requirements for decommissioning nuclear power reactors. The staff should make the changes to the *Federal Register* and the letter to the petitioners as noted in the attachment.

(EDO)

(SECY Suspense: 7/20/01)

Attachment: [Changes to the Federal Register Notice and Letter to the Petitioner](#)

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
CFO  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR

ATTACHMENT

### Changes to Draft Federal Register Notice

1. Page 2, line 20: replace "after the petitioner's three requests" with "below"
2. Page 3, line 20: add a comma after "... groups representing licensees"
3. Page 4, last paragraph/footnote 1: replace the paragraph and footnote 1 with the following,  
" The NRC staff reached a conclusion similar to the commenters. All co-owners are required to be co-licensees, subject to all NRC regulations, including those with respect to decommissioning reporting. See Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 198-201 (1978). Thus, this issue is moot, because the remedy sought by the petitioner is already in place."
4. Page 5, line 1: change "Secondly," to "Second,"
5. Page 5, line 3: delete "considered" and "by the NRC"
6. Page 5, line 6: add "Y" to "SEC"
7. Page 5, line 8: change "... also provide for licensees to submit" to "... provide that licensees are to submit"
8. Page 5, line 13: delete "the staff finds that"
9. Page 5, line 15: delete "NRC staff's" and "staff"
10. Page 5, line 16: change "adequately protect" to "provide adequate protection of"
11. Page 5, line 17: change "Thirdly," to "Third,"
12. Page 6, line 3: delete "staff has" and change "concluded" to "concludes"
13. Page 6, line 6: delete "some"
14. Page 6, line 7: change "were responded to" to "prompted responses"
15. Page 6, line 8: move "about" before "which the petitioner ..."
16. Page 6, line 9: change "such estimates." to "estimates of such costs."
17. Page 6, line 10: add "a" before "'greenfield'"
18. Page 6, last line/footnote 2: move the footnote number to end of the last sentence on this page
19. Page 7, line 2: add "issues relating to" after "LLC, namely"
20. Page 7, lines 5/6: delete the sentence "The most recent ..."
21. Page 7, line 7: change "and its resubmittal in" to "and in response to a request for clarification, resubmitted it in"
22. Page 7, line 8: add "After review of the resubmitted report," before "NRC had no ..." and delete "with the resubmittal"
23. Pages 7 and 8, revise the last paragraph on page 7 which carries over onto page 8 to read as follows:

"In summary, the NRC is denying the petition for the following reasons: 1. With respect to the petitioner's first request to require uniform reporting and recordkeeping for all "proportional owners" of nuclear generating stations, the NRC ~~finds~~ ~~believes~~ this issue ~~is~~ moot ~~- This is because in Public Service~~

Company of Indiana, Inc. Marble Hill (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 198-201 (1978) it was determined that the Commission requires all co-owners to be are co-licensees. Therefore, under 10 CFR § 50.75 the requirements of the final rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, September 22, 1998 (63 FR 50465) the co-owners are already required to comply with the reporting and recordkeeping requirements. In addition, as discussed below, the NRC has staff determined that all licensees, including co-owners, complied with section 50.75(f)(1) by submitting the initial decommissioning status reports submitted in March 1999. The NRC staff issued an assessment of the reports (SECY-99-170, July 1, 1999) which indicated that " ... all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shut down their units." There is no evidence that the nuclear energy industry as a whole, or any particular facility or licensee, are failing to accumulate sufficient funds for decommissioning." As a result, the NRC finds no need to act on this portion of the petition and denies it."

24. On page 8, paragraph number 2., revise lines 3 and 4 to read ' ... proportional owners are considered licensees and are, therefore, required by the NRC. Also, in 10 CFR 50.75(f) ,beginning in March 1999, every power reactor licensee is required to file a biennial decommissioning ....'
25. On page 8, paragraph number 2., line 5, delete 'Further,' and capitalize 'The' at the start of the sentence.
26. On page 8, paragraph number 2., revise lines 6 through 9 to read ' ... and recordkeeping requirements. As mentioned, tThe NRC staff issued an positive assessment of the reports (SECY-99-170, July 1, 1999) which indicated that "There is no evidence that the nuclear energy industry as a whole, or any particular facility or licensee, are failing to accumulate sufficient funds for decommissioning.". In addition, Further, the requirements of §50.75 and §50.82 also ....'
27. On page 8, paragraph number 3., revise lines 2 through 4 to read 'NRC - does not have the legal authority to require such action under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other Federal statute ;does not have the legal authority to require such action.'
28. On page 8, last paragraph, revise lines 2 and 3 to read ' ... the NRC has no regulatory requirement that authority to require licensees to return the facilities ....'
29. On page 9, revise line 3 from the top to read ' ... published on June 19, 1996 + . See 61 FR 39278 (i.e., promulgating 10 CFR 50.82(c)).'
30. On page 9, revise line 8 from the top to read ' ... NRC in 10 CFR 50.54(bb) (originally adopted in the Waste ....'
31. On page 9, 1<sup>st</sup> full paragraph, revise lines 3 and 4 to read ' ... NRC addressesd the minimum funding for waste disposal issue in the above mentioned NUREG-1307, Revision 9, which ....'
32. On page 9, 1<sup>st</sup> full paragraph, revise lines 6 through 8 to read ' ... funding status reports, " ... all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shutdown their units There is no evidence that the nuclear energy industry as a whole, or any particular facility or licensee are failing to accumulate sufficient funds for decommissioning." Therefore, the NRC staff has no indication ....'
33. On page 9, last line, delete 'staff'
34. On page 10, revise line 2 from the top to read ' ... rulemaking, Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, completed on September 22, 1998 (63 FR 50465), as well as ....'
35. On page 10, line 3 from the top, delete 'in sum'

## Changes in the Letter to the Petitioner

1. On page 1, last paragraph, revise lines 5 through 7 to read ' ... which indicated that "... all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shut down their units There is no evidence that the nuclear energy industry as a whole, or any particular facility or licensee, are failing to accumulate sufficient funds for decommissioning."
2. On page 2, 1<sup>st</sup> full paragraph, revise lines 4 through 6 to read 'NRC - does not have the legal authority to require such action under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other Federal statute ;does not have the legal authority to require such action.'
3. On page 2, 2<sup>nd</sup> full paragraph, revise lines 2 and 3 to read ' ... and the NRC's response to staff's proposed resolution of them, is contained ....'
4. On page 2, 2<sup>nd</sup> full paragraph, add the following at the end of the paragraph: 'In addition, a detailed discussion of the Commission's reasoning in this matter is contained in the enclosed notice of Denial of Petition for Rulemaking, which will be published in the *Federal Register*.'
5. On page 2, delete the 3<sup>rd</sup> and 4<sup>th</sup> full paragraphs.
6. On page 2, last paragraph, revise line 1 to read ' ... petition is denied ;as evidenced by our recent rulemaking activity in this area, because we believe our regulatory requirements are sufficient, we ....'