

October 26, 2004

MEMORANDUM TO: Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Luis A. Reyes **/RA Martin J. Virgilio Acting For/**
Executive Director for Operations

SUBJECT: USE OF INSURANCE AS A METHOD TO PROVIDE FINANCIAL
ASSURANCE FOR DECOMMISSIONING NUCLEAR POWER
REACTORS

The purpose of this memorandum is to inform the Commission of the staff's proposed Standard Review Plan (SRP) criteria for evaluating the insurance method of providing financial assurance for decommissioning nuclear power reactors and provide the status of the staff's ongoing reviews of two insurance proposals.

In a memorandum dated May 20, 2004, from then Executive Director for Operations, Dr. William Travers, the Commission was informed of the staff's receipt of two first-of-a-kind proposals submitted by Marsh USA (Marsh) and Nuclear Electric Insurance Limited (NEIL) to use insurance to provide financial assurance for decommissioning nuclear power reactors pursuant to 10 CFR 50.75(e)(1)(iii). In that memorandum, the staff stated that it would develop SRP criteria to evaluate the use of insurance, commence reviews of the two proposals, and inform the Commission of its progress by October 2004.

The U.S. Nuclear Regulatory Commission (NRC) regulations at 10 CFR 50.75(e) specify that insurance is an acceptable method for a licensee to demonstrate reasonable assurance that sufficient funds will be available for the plant decommissioning process. Specifically, 10 CFR 50.75(e)(1)(iii) requires that certain terms and conditions must be present in the decommissioning insurance policy. These conditions include: automatic renewal, 90-days advance notice by the insurer of intent not to renew the policy, and payment of the full face amount into a trust if the licensee fails to provide an acceptable replacement after receiving notice of the insurer's intent to cancel the policy.

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However, 10 CFR 50.75 contains only limited requirements for use of the insurance method. Similarly, existing guidance provided by NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (SRP), and NUREG-1757, Vol. 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness," provide only limited information for evaluating the insurance method. As a result, the staff developed a draft supplement to the SRP which provides criteria for evaluating the use of the insurance method. The draft supplement SRP criteria were published for public comment in the *Federal Register* on July 19, 2004 (Attachment 1, 69 FR 43278).

Status of Proposed SRP Criteria

As of August 18, 2004, the end of the comment period on the draft supplement SRP criteria, the staff had received comments from seven industry organizations: the Nuclear Energy Institute (NEI), AIG Environmental (AIG), Morgan Lewis on behalf of Marsh, Tennessee Valley Authority (TVA), Progress Energy, Exelon Nuclear (Exelon), and NEIL. A number of the commenters, including NEIL, Marsh, TVA, and Exelon, endorsed NEI's comments.

The staff also interacted with a number of State Public Utility Commissions (PUCs) and representatives of the National Association of Regulatory Utility Commissioners (NARUC) regarding the draft supplement SRP criteria, and learned that several PUCs intend to submit comments. The staff recently received comments from the State Public Service Commissions of Wisconsin and Michigan. The submittal of any other PUC comments is uncertain at this time. Nonetheless, based on telephone discussions with the PUCs and NARUC, the staff does not expect that any additional State comments would result in any major changes to the criteria. The staff revised the draft supplement SRP criteria, based on public comments, and developed the proposed final supplement SRP criteria (Attachment 2). The staff considers the proposed final supplement SRP criteria to be adequate, at this time, to be used to complete its review of the two proposals by summer 2005. The staff plans to issue the final supplement SRP criteria in summer 2005.

Key Issues/Staff Positions Regarding the Insurance Method

The comments received on the draft supplement SRP criteria, as provided in Attachment 3, generally support NRC's issuance of the criteria but raise a number of key issues which are highlighted below for the Commission. Additional details regarding the staff's resolution of all the comments are provided in Attachment 4.

I. Financial Qualifications of the Insurance Company

State PUC commenters supported the SRP criteria. However, the NEI recommended deletion of the SRP requirements that a captive insurance company obtain (1) a private letter ruling from the IRS as to whether the company qualifies as an insurance company and (2) a financial rating.

NEI recommended that the staff instead evaluate each proposal on a case-by-case basis, with deference to the solvency requirements of the insurance commissioner of the State in which the insurer is licensed. It also recommended deletion of the SRP requirements that the insurer be licensed in the State where the insured plant is located and that the insurer provide the NRC with a statement of approval or no objection to the insurance program from the PUC in the State where the relevant plant is located, if the PUC continues to exercise oversight of decommissioning funds.

Staff Position - The provider of the insurance policy must be financially qualified. This is consistent with the requirement of 10 CFR 140.17(a) with respect to liability insurance that the insurer must demonstrate "a clear ability to meet its obligations." Although a similar requirement is absent from 10 CFR 50.75, the staff believes that the insurer must demonstrate assurance that, within the coverage limits of the policies, sufficient funds will be available for decommissioning all plants covered by the insurer's policies.

The staff is concerned about the long-term financial stability of proposed insurance companies, especially new insurance companies that do not have a financial history, and does not agree with the NEI comments to delete the various regulatory approvals. In particular, for a small, captive insurer that is wholly owned by the insureds, "risk pooling" could lead to situations where concurrent payouts of decommissioning costs for multiple plants depletes funds needed for other plants. Reinsurance is also a concern of the staff in that there may be no third party, such as another company that provides reinsurance or a parent company, that will guarantee supplemental funds to the insurance company, if needed.

To address these concerns, the proposed final supplement SRP criteria state that on a plant-specific basis the insurer must do the following:

- If the proposed insurer is a captive, a risk retention group (RRG), or a mutual insurance company, present to the NRC an IRS private letter ruling finding that the insurer is a qualified insurance company thereby permitting certain tax treatment.
- Be licensed by the insurance commission in the States where the plants are located or obtain approval or a statement of no objection for each plant-specific policy from each relevant State insurance commission.
- If the insurer is a captive, an RRG, or a mutual insurance company, possess an acceptable financial strength or safety rating from a nationally recognized insurance rating organization.
- Provide to the NRC a statement from the relevant PUC approving or having no objection to the insurance policy if the licensee is an electric utility or a non-electric utility with access to non-bypassable charges. The staff intends to make it a condition of NRC approval that the PUC accepts or does not object to the proposed policy, since ratepayer funds will be used to purchase the insurance policy and the PUCs generally have oversight of such funds.

II. Claims Management of Decommissioning Costs

The NEI asked that the NRC recognize and allow a claims payment process whereby an insurer can assess a claim prior to reimbursing the licensee for insured costs actually incurred. The commenters stated that it is commercially unreasonable to expect any insurer to pay claims without regard to whether the costs have been incurred and are covered by the policy. They also stated that the absence of the insurer's claims management process could present a significant impediment to obtaining State insurance commissioner approval or the necessary determination from the IRS that the arrangements constitute insurance for tax purposes.

Staff Position -The existing system for the management and payment of decommissioning costs has been effectively used in the decommissioning of nuclear power reactors. To recover decommissioning costs, the licensee submits to the trustee a decommissioning payment request that is in accordance with the NRC-approved license termination plan and/or the provisions of 10 CFR 50.82(a)(8). The trustee verifies that the request is valid and withdraws funds from the trust to pay the licensee. Therefore, both the staff and trustees have a limited role in any licensee's request to withdraw decommissioning funds pursuant to 10 CFR 50.82(a)(8) or an approved license termination plan. Trustees simply verify that the licensee's request is for activities consistent with an NRC-approved plan and/or 10 CFR 50.82. However, the staff can audit the licensee's payment requests to ensure that the licensee is complying with the NRC-approved plan and/or 10 CFR 50.82.

Claims management may be a significant issue for a proposed insurance company whose program relies on a comprehensive claims management process involving substantive review and approval by the insurer of decommissioning activities, vendor selection, and payment of costs. The staff is concerned about any substantive claims management process implemented by an insurer because that process could interfere with NRC's direct regulatory oversight of licensees. The staff believes that such a process has the potential to undermine the system of financial controls established under 10 CFR 50.82 and interfere with the licensee's ability to complete decommissioning in a timely manner in accordance with plans approved by the NRC.

In addition, the staff believes that there are three existing conditions which preclude the need for the insurer to perform claims management: (1) the NRC and a licensee and its decommissioning contractor already provide extensive oversight of costs of decommissioning activities, (2) the trustee of the decommissioning trust certifies the licensee's request for payment to assure that costs are paid only for activities consistent with NRC-approved plans or 10 CFR 50.82, and (3) other approved decommissioning funding methods do not involve any additional claims management process. Further, although claims management is a normal commercial insurance process in other industry contexts, the staff does not believe that it is appropriate in the NRC's reactor decommissioning process, which involves NRC approval of specific decommissioning plans and licensees' adherence to those plans.

Therefore, the proposed final supplement SRP criteria state that a claims management process is unacceptable. The proposed final SRP criteria require the insurance company to pay the trustee of the decommissioning trust or standby trust as necessary to support the trustee's disbursement of funds to cover legitimate decommissioning costs.

III. Amount of Coverage

The NEI asked that the NRC not impose constraints on provisions allowing any increases or reductions in coverage in any limits under a predetermined methodology.

Staff Position - The coverage specified in an insurance policy is the amount of financial assurance to be provided throughout the term of the policy. Some policies may contain variable amounts of insurance coverage contingent on certain events. For example, the amount of coverage for a reactor could increase over the term of the license; it could also be reduced for premature decommissioning. Other policies may contain a specified coverage that does not change over the term of the operating license.

The staff believes that the insurance policy should provide either specified face amounts of coverage or a methodology by which definitive payout amounts can be calculated at any time throughout the period of coverage.

Therefore, the proposed final supplement SRP criteria state that if any proposed insurance policy provides more than a single pay-out amount, the NRC will use only the lowest amount when assessing whether a sufficient amount of coverage has been offered, whether it is in combination with one or more other approved decommissioning funding assurance methods or it is the sole assurance method.

IV. Investment Restrictions

The NEI stated that when NRC decommissioning funds are transferred from prepaid funds or from an external sinking fund to buy insurance, the SRP should require that the standard of care for investments of those funds be either the standard imposed by a PUC or State insurance commissioner or, where no such standard applies, the prudent investor standard.

Staff Position - Restrictions on the investment of decommissioning trust funds of non-electric utilities exist under 10 CFR 50.75(h)(1). Use of the insurance method could involve the transfer of substantial amounts of funds from a licensee's decommissioning funds, currently held in external trusts, to the insurance company. The insurance company could invest those funds in order to build and maintain sufficient reserves to pay for decommissioning. Like any other investment, the invested funds could be subject to market fluctuations. It is important that the insurance company invest and manage the funds in a prudent manner.

Accordingly, for non-electric utilities, the staff believes that to reasonably ensure that funds will be available from the insurance company when needed, the insurance company should be

subject to the restrictions analogous to those in 10 CFR 50.75(h)(1), which obligates a decommissioning trust fund trustee to adhere to applicable State or Federal standards or, in their absence, the prudent investor standard.

Therefore, the proposed final supplement SRP criteria state that, as a condition in the insurance policy, the insurer must invest all NRC decommissioning funds transferred from prepaid funds or an external sinking fund, and all earnings thereon, consistent with applicable state standards, or, where no such standards apply, the prudent investor standard set forth in 18 CFR Part 35 Subpart E.

Under certain plant-specific insurance policies for non-electric utilities, the trustee of an existing nuclear decommissioning trust would use all or substantially all of the trust funds to purchase an insurance policy but maintain the policy as a trust investment. In this case, the trustee would be making essentially a single investment, rather than investing in a diversified portfolio with offsetting risks as would be required, for example, under the prudent investor standard.

Therefore, because 10 CFR 50.75(h)(1) effectively bars non-electric utilities from establishing single-investment decommissioning trusts, certain insurance policies described above may require an exemption to the requirements in this regulation. The single investment restriction is not included in the proposed final supplement SRP criteria, as it will be addressed on a case-specific basis.

Status of Ongoing Reviews of Proposals To Use Insurance

Based on the results of discussions in meetings on May 12 and June 2, 2004, with Marsh and NEIL, respectively, the staff accepted the proposals for review. The staff initiated its reviews of the proposals in May 2004, and is currently on schedule to issue requests for additional information by October/November 2004, based on the attached proposed final supplement SRP criteria and complete the reviews by mid-2005. If the proposed insurance methods are acceptable, the staff plans to review any future applications of the proposed methods on a plant-specific basis.

Status of Decommissioning Reactor Insurance Exemption Request

Additionally, the staff provided SECY-04-0176, dated September 29, 2004, to the Commission denying exemption requests from Maine Yankee, Yankee Rowe, Trojan, and Big Rock Point to reduce the primary insurance coverage required by the Price-Anderson regulation for conditions where removal of all spent fuel has been transferred to an independent spent fuel

storage installation. Upon completion of ongoing spent fuel pool risk studies and pending its resolution of safeguards and security issues regarding these reactors, the staff will revisit the requests for exemptions and any other policy matters pertaining to the level of indemnity insurance coverage for a decommissioning reactor.

- Attachments:
1. *Federal Register* Notice: Draft Supplement Standard Review Plan
(69 FR 43278; July 19, 2004)
 2. Proposed Final Supplement Standard Review Plan: Decommissioning
Funding Assurance for Power Reactors
 3. Public Comments on Draft Supplement Standard Review Plan
 4. Proposed Staff Resolution of Comments on Draft Supplement Standard
Review Plan

cc: SECY
OGC
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OCA
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CFO

NUCLEAR REGULATORY COMMISSION

Issuance of Draft Supplement Standard Review Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of draft supplement to Standard Review Plan for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing a draft supplement to the Standard Review Plan (SRP) which expands NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance." The proposed draft supplement to the SRP provides criteria for evaluating the use of an insurance policy to provide decommissioning funding assurance under 10 CFR 50.75. The NRC finds that the proposed criteria will enable the staff to determine whether through the use of an insurance policy, there is reasonable assurance of providing decommissioning funding to ensure adequate protection of public health and safety. The NRC is interested in stakeholder comments that will improve the safety benefits, effectiveness, and efficiency of the review of insurance policies to provide decommissioning funding assurance.

DATES: Submit comments by [Insert date 30 days after publication in the Federal Register].

Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for the comments received before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following reference, NUREG-1577, Rev. 1, in the subject line of your comments.

Comments on the draft supplement in writing or in electronic form will be available for public inspection. Because your comments will not be edited to remove identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Chief, Rules and Directives Branch, Mail Stop TG-D59, Nuclear Regulatory Commission, Washington, DC, 20555-0001.

E-mail comments to: NRCREP@nrc.gov. You may also submit comments via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>. This site provides the capability to upload comments as files (any format), if your web browser supports that function. Address questions about the rulemaking web site to Carol Gallagher at (301) 415-5905; E-mail CAG@nrc.gov.

Hand deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:30 AM and 4:15 PM on Federal workdays, telephone (301) 415-1966.

Fax comments to: Chief, RDB, Nuclear Regulatory Commission at (301) 415-5144.

Copies of the draft supplement specified in this notice and other publicly available documents related to this draft supplement, including public comments received, can be viewed electronically on public computers in the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Room O-1F21, and open to

the public on Federal workdays from 7:45 AM until 4:15 PM. The PDR reproduction contractor will make copies of documents for a fee. Selected documents, including public comments on the draft supplement, can be viewed and downloaded electronically via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>.

Publicly available NRC documents created or received in connection with this draft supplement are also available electronically via the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC PDR Reference staff at (800) 397-4209, (301) 415-4737 or by E-mail at PDR@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Michael A. Dusaniwskyj, Office of Nuclear Reactor Regulation, Mail Stop O-12D3, United States Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone (301) 415-1260, or E-mail MAD1@nrc.gov

SUPPLEMENTARY INFORMATION:

ABSTRACT

The NRC is issuing this draft supplement to the SRP to provide criteria that will be used to review the insurance method of providing decommissioning funding assurance. This draft supplement reflects current regulations and policy, and will be updated for any future initiatives.

PROPOSED SUPPLEMENT TO STANDARD REVIEW PLAN:
DECOMMISSIONING FUNDING INSURANCE
FOR POWER REACTORS

I. AREAS OF REVIEW

The NRC is issuing this draft supplement to describe criteria that will be used by the staff to review power reactor license applicants' and licensees' insurance methods of providing required decommissioning funding assurance. This document provides detailed criteria with respect to section III.2(f)(4) of NUREG-1577, Rev. 1 and as such will supplement NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (October 2003).

II. ACCEPTANCE CRITERIA

Decommissioning funding insurance may be referred to by different names such as "decommissioning insurance," "decommissioning liability insurance," "decommissioning expense liability policy," etc. The label is much less important than (1) the terms and conditions of the policy relating to (a) the amount and scope of coverage and (b) the certainty of availability of funds, and (2) the qualifications of the issuer of the insurance policy. For these key elements, acceptance criteria are provided below.

Amount and Scope of Insurance Coverage

1. Per 10 CFR 50.75(b)(1), Amount of Coverage Equal or Greater than Table of Minimum Amounts (§ 50.75(c) for NRC § 50.2 Decommissioning Costs (e.g., excluding cost of removal and disposal of spent fuel and non-radioactive structures and materials beyond that necessary to terminate the license) or a Site-Specific Decommissioning Cost Estimate (§ 50.75(b)(4)).

Confirm that the policy provides an adequate amount of coverage (“liability limit”) for NRC decommissioning costs, which is an amount not less than the table of minimum amounts (§ 50.75(b)(1)). Although the “Declarations” section of the policy (often the cover page) typically shows the “limit of liability” or “face amount,” it is important to review the entire policy. The amount of coverage should be a specific dollar number and not be a schedule or formula contingent on projected earnings under the policy. Coverage for amounts only in excess of the minimum amounts (or site-specific cost estimate) and up to the actual cost of decommissioning does not satisfy the regulations. The insurance policy should guarantee at least the total amount of currently estimated decommissioning costs (NUREG-1577, Rev. 1 § III.2.f(2)).

Determine whether the amount of coverage includes both NRC and non-NRC costs. If a policy covers both NRC and non-NRC costs, they should be separately identified and only NRC-required costs should be assessed as equal to or greater than the minimum amount. See §§ 2.1.2 and 2.1.7 NUREG 1.159 Rev. 1 and NUREG-1577, Rev. 1 § III.2.a(3). The same approach should be used if the amount of coverage includes costs for onsite spent fuel management (see NUREG-1700, Rev. 1).

Evaluate whether there are any stated sublimits. In particular, a policy containing a sublimit for NRC costs lower than the minimum amount may render the policy non-compliant, even if the sublimit applies only in the event of premature closure or only in the event of cancellation, termination, non-renewal or rescission of the policy.

Different limits for decommissioning that occur during the initial license period or during the period of license renewal are acceptable if they are for amounts not less than the NRC minimum amounts.

The amount of coverage should be capable of being adjusted (§ 50.75(b)(2) and § 2.1.5, Reg. Guide 1.159, Rev. 1). The policy language may not be clear on whether and how the limits of liability may be adjusted. Typically, this is done through “endorsement.” Find any “changes” clause (see #14 below). A policy with limits that can be adjusted down but not upwards would require that another financial assurance mechanism make up the difference.

Determine whether there are any “deductibles.” A deductible may be called a “retention,” a “self-insured retention,” “self-insurance,” or other euphemism. Typically, the deductible is expressed as a flat dollar amount that must be paid by the insured before the insurer's liability under the policy is triggered. A deductible is acceptable if the policy provides “first dollar coverage” of the deductible by the insurer. First dollar coverage means that the insurer is responsible for paying the deductible amount (e.g., into the standby trust fund), while the insured is separately responsible for reimbursing the insurer for the amount of the deductible. Another type of deductible involves the insured sharing in some defined proportion of the decommissioning expenses from a dollar starting point (termed the “attachment point”) until

some defined dollar ending point. Absent first dollar coverage expressly provided by the policy, the licensee must provide another assurance mechanism in combination with insurance to cover deductible amounts or demonstrate that its sinking funds can cover the deductible(s) (§ 50.75(e)(1)(vi)). The combined amount should at least equal currently estimated decommissioning costs (NUREG-1577, Rev. 1 § 111.2.f(2)).

2. Annual Adjustment of Minimum Amount of Coverage (§ 50.75(c)(2))

If this is not the first year the policy is used, determine whether the amount of coverage provided satisfies the adjusted required minimum amount.

3. Scope of Coverage (§ 50.2)

Verify the scope of coverage, which should be for NRC (§ 50.2) defined decommissioning costs. Relevant language defining the scope may appear in different sections of the policy, such as under “Insuring Agreement, Definitions, Exclusions, Conditions, and Declarations.”

Review any policy language that defines covered decommissioning costs only as those incurred by reason of work performed during the policy period; such a limit is inconsistent with the payment of funds into the standby trust prior to decommissioning costs being incurred by the licensee by reason of work actually performed.

If the scope of the policy covers non-NRC (i.e., greenfield costs) costs as well as NRC costs, verify that coverage of non-NRC costs is limited in amount so that those costs do not draw on

money intended for NRC costs. Similarly, if the policy covers spent fuel management financial assurance (§ 50.54(bb)), verify that coverage of these costs will not draw on money intended for coverage under § 50.75 (see C.11 “Use of Funds” NUREG 1.184).

Determine if the scope of coverage has been unduly restricted by any “exclusions” written into the policy. Exclusions of costs not intended to be covered under decommissioning, not appropriate for coverage under decommissioning insurance, and costs covered under other insurance programs should be acceptable.

Costs NOT intended to be covered under decommissioning include:

- operational expenses
- accident response (see § 50.54(w))
- repair or replacement of damaged property
- on-site spent nuclear fuel management (see § 50.54(bb))
- decontamination or cleanup prior to permanent cessation of operations
- transportation and disposal of spent fuel

Costs not appropriate under insurance for decommissioning funding:

- costs due to fraudulent, dishonest, or criminal acts, unless such acts result in decommissioning

- fines, penalties, etc. imposed for violation of federal or state law
- intentional, willful, or deliberate non-compliance, unless such acts result in decommissioning
- bodily injury/property damage*
- workers compensation, disability benefits, unemployment compensation*
- post-accident decommissioning*

Note: *Costs covered under other insurance.

It is common to find legal fees excluded from insurance coverage in liability policies.

However, such costs related to decommissioning must be covered by decommissioning insurance if incurred.

NRC review should be based on the entire policy and all endorsements and not solely on any Certificate of Insurance provided or solely on the Declarations page.

Certainty of Coverage: Issuer Qualifications

4. Issuer Qualifications

Determine the identity of the issuer of the policy (not to be confused with any broker or agent involved in the transaction). The name and address of the issuer should be included in the policy (§ A.12.3, NUREG-1757).

Determine the “domicile” of the insurer, which may be a U.S. state or a foreign country where the insurer is incorporated. Special terms and conditions are appropriate for insurers domiciled outside of the U.S.

The insurer must be “licensed” by authorities of the State where the relevant nuclear plant is located to transact the business of insurance, (§ 2.3.3, NUREG 1.159 Rev. 1). One can verify that the insurer is licensed by checking with the insurance commission or agency in that state; many states provide on-line directories of their licensed insurers.

Where practical, review databases or reference documents to determine whether the insurer is a commercial firm capable of selling policies to anyone or is instead an organization-- termed a “captive,” a “risk retention group (RRG),” or “mutual” insurer -- that can sell insurance only to one or a limited number of reactor owners.

A policy issued by a captive insurer that covers only a single owner's reactor(s), often termed a “pure captive,” will be problematic. Such a policy is synonymous to self-insurance, which NRC regulations do not permit.

A mutual, captive, or RRG that can insure more than a single owner's reactors also may be problematic unless the insurer covers a relatively large number of owners and reactors.

A group captive, RRG, or mutual insurer is acceptable if:

- (a) the Internal Revenue Service has issued a letter ruling finding that premiums paid to the insurer will be considered deductible for tax purposes, and
- (b) the issuer of the insurance policy has received a financial strength or safety rating of A- or better from A.M. Best, A- or better from Standard & Poor's, A-3 or better from Moody's, A- or better from Fitch, or B- or better from Weiss Rating, as its most recent, issuer-specific rating.

NOTE: The issuer of the policy must be acceptable to the NRC. As required for nuclear energy liability insurance, the Commission may require proof that the organization or organizations which have issued policies are legally authorized to issue them and do business in the United States and have clear ability to meet their obligations (§ 140.18(a)).

5. The Trustee of the Standby Trust Must Be Acceptable to NRC (§ 50.75(e)(1)(iii)(A)(2))

An acceptable trustee includes (1) an appropriate State or Federal government entity or (2) an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State Agency (§ 50.75(e)(1)(iii)(A)(2)). See § 2.2.6 of NUREG 1.159 Rev. 1 for information on verifying the acceptability of financial institutions as trustees. One can also use § 4.3.2.15 of NUREG-1757, Vol. 3 to determine the acceptability of a non-government trustee.

Certainty of Coverage: Terms and Conditions of Policy

6. Covered Licensee(s)

The policy must include the name and address of the covered licensee(s), their NRC license number(s), and the name(s) and address(es) of the covered facility(ies), (§ A.12.3, NUREG-1757).

7. Licensee's Regulatory Obligations

The policy should contain a statement of the licensee(s)' regulatory obligations as the reason for the policy.

8. Duration/Term of Coverage (§ 50.75(e)(1)(iii)(A)(1))

The policy must state an “effective date” (or “inception date”) and may state an expiration or termination date.

Verify that the term of coverage either is open-ended, or, if written for a specified term ending on a particular date, that the policy is automatically renewed, unless the issuer notifies NRC, the beneficiary, and the licensee of its intent not to renew; as stated by § 50.75(e)(1)(iii)(A)(1), such a provision must require notice at least 90 days prior to the renewal date, which is best evidenced by return receipts.

9. Cancellation/Termination and Non-Renewal

The policy should require a minimum of 90 days prior notice to NRC, as evidenced by return receipts, of the insurer's or the insured's intent to cancel, non-renew, or terminate the policy (§ A.12.3, NUREG-1757, Vol 3, & § 50.75(e)(1)(iii)(A)(1) (for non-renewal only)).

It is acceptable if the policy states that the insurer may cancel or terminate the policy if the premium is not paid. Some policies may provide only a short period (e.g., 10 days) prior to cancellation/termination in the event of non-payment of premium or misrepresentation/fraud.¹ Such a short period is not acceptable, because it does not allow sufficient time for the licensee to arrange alternative coverage or for NRC to take appropriate action prior to its cancellation/termination if the licensee fails to provide an acceptable substitute. A period of 90 days should be the minimum following notice to NRC and the insured. A provision stating that the insurer may not cancel, terminate, or non-renew the policy if the licensee is named as a "debtor in bankruptcy proceedings" is desirable.

¹ Misrepresentation/fraud is a basis for declaring an insurance policy null and void through the legal process of rescission.

10. Automatic Payment Prior to Cancellation/Termination/Non-renewal (§ 50.75(e)(1)(iii)(A)(1))

The insurance policy must provide that the full "face amount" for NRC decommissioning costs be paid to the beneficiary (i.e., decommissioning trust) automatically prior to policy cancellation/termination/non-renewal "without proof of forfeiture" if the licensee fails to provide a

replacement acceptable to the NRC within 30 days after the licensee or NRC receives notice of cancellation/termination/non-renewal, as evidenced by return receipts (§ 50.75(e)(1)(iii)(A)(1) provides 30 days after notice of intent to cancel).

11. Beneficiary

The “beneficiary” should be the standby trust, but may be defined as the licensee of the covered facility. A policy should be acceptable even if it does not designate a beneficiary, so long as it guarantees that funds drawn from the policy must be paid into the standby trust (see #20 below).

12. Bankruptcy or Insolvency of the Insured

The policy should contain a provision to the effect that bankruptcy or insolvency (a condition of financial distress) of the insured does not relieve the insurer of any of its obligations.

13. Primary Not Excess Insurance

The policy should not contain a clause to the effect that if the licensee has other valid and collectible insurance applicable to decommissioning, then the decommissioning insurance under review shall be “excess insurance” over such other coverage. Because licensee property insurance (e.g., Nuclear Electric Insurance Limited) may cover decommissioning in certain situations, certainty and timeliness of decommissioning coverage may be impeded by having to resolve which insurance coverage is primary or excess.

14. Changes

The policy should state that its terms shall not be waived or changed except by written “endorsement”² issued to form a part of the policy and unless sixty days prior written notice has been given to the NRC, and the NRC has not objected within that time. A clause that permits the insurer and the insured to agree to changes in the policy against the disapproval of the NRC is not acceptable.

² An “endorsement” is a document that is treated as an integral part of the policy although it typically is issued later. Endorsements will be labeled as such and numbered.

15. Designated Agent

The policy should identify an agent of the insurer who is to receive all notices and other required communications and whose requests, demands, and agreements are deemed to have been made directly by the insurer (see, for example, clause 16 in 10 CFR § 140.91). Complete contact information should be provided in the policy.

16. Authorized Signatories (§ 2.1.3, NUREG 1.159, Rev. 1)

The policy must be signed and dated. The parties signing the policy must be authorized to act for the licensee and the insurer in the transactions. A duly authorized representative may be either a named individual or any individual occupying a named position. All required signatures should be notarized. For a licensee that is a corporation or limited liability company, a principal

executive officer of at least the level of vice president should sign; for a licensee that is a municipality, state, Federal, or other public agency, either a principal executive officer or ranking elected official should sign. A person is deemed to be a duly authorized representative if the person is authorized in writing by an individual described above, and the authorization specifies either an individual or a position having responsibility for the overall operation of the reactor or power company, such as the position of plant manager, a superintendent, or person of equivalent responsibility.

17. Original, Conformed Copy, or Photocopy of Original (§ 2.1.4, NUREG 1.159, Rev. 1)

NRC may review the original, a conformed copy, or a photocopy of the original policy. A conformed copy is a word for word copy of a document, which may be marked "conformed copy." A conformed copy may substitute the printed or typewritten name of each signatory in place of each signature. If the copies are not signed, they should be accompanied by a declaration signed by an officer authorized to sign for the organization, certifying that they are "complete and accurate copies" of the original document. A photocopy is produced by a process that accurately reproduces the original and is marked as a "copy." An originally signed duplicate is a conformed copy or photocopy that bears originally handwritten signatures.

18. Policy Must Conform to Applicable State Law (§ 2.3.1, NUREG 1.159, Rev. 1)

A determination that the policy conforms to applicable state law can be based on opinion letters, which are best provided by an independent law firm or lawyer that practices insurance law and/or by an insurance broker's in-house counsel. The opinion letter should identify the

state whose law is applicable (e.g., the state where the reactor is located, the state where the policy is issued) and should state that the policy conforms to the laws of that state. The counsel signing the letter should be admitted to the bar of the state whose law is at issue and the letter should so state; NRC can confirm the lawyer's qualifications by contacting the state bar association or by checking with legal reference books (e.g., Martindale-Hubbell Law Directory).

19. State Public Utility Commission Approval or Non-objection

For electric utility licensees with access to non-bypassable charges, the licensee's State public utility commission must have approved the use of the insurance policy or raised no objection to the use of the particular policy. There should be some documentation of such approval or non-objection (e.g., correspondence between the licensee and Public Utility Commission).

20. Assignment

The policy should contain a provision allowing "assignment" (i.e., transfer) of the policy to a successor licensee. The policy may specify that the assignment is conditional upon the consent of the insurer so long as the policy also states that such consent "will not be unreasonably refused." Right of assignment enables a licensee to redeem value from the policy if ownership or operation of the covered facility is transferred to a new party. The insurer may want the right to consent to or refuse assignment in order to protect itself against transfers of ownership or operation that would unfairly prejudice the interests of the insurer in a manner not contemplated originally (e.g., transfer of the facility to an insolvent owner). Refusal to

consent to assignment would be “unreasonable” where the interests of the insurer are not prejudiced by a successor licensee replacing the original insured party.

21. Proceeds Payable to a Decommissioning Trust Fund (§ 50.75(e)(1)(iii)(A)(2))

The insurance policy must be payable to a trust established for decommissioning costs (§ 50.75(e)(1)(iii)(A)(2)). The trust may or may not be identified in the policy as the “beneficiary” of the insurance.

If there are any conditions or limitations in the policy regarding payments to the trust fund, these should be assessed for their impact on availability and certainty of financial assurance. For example, it is preferable that the policy does not state that payments shall be made only on the “default” of the licensee to satisfy decommissioning requirements.

A policy may identify several different parties to whom proceeds are payable, and these will need to be reviewed and clarified; NRC should expect that improvements in drafting can eliminate any ambiguities and inconsistencies in the policy.

Although the regulations clearly state that the insurance must be payable to a decommissioning trust, they do not state when or how to make the payments. Any policy terms that would impact the timing and amount of payments into the trust fund should be reviewed from the point of view of the guiding principle of having reasonable assurance of having funds when needed. The NRC's decommissioning regulations contemplate that decommissioning payments will be made from the trust and not by the insurer, so the insurer must timely transfer ample funds to the

trust, if not all the funds covered by the policy at once, on a schedule consistent with access to funds allowed by § 50.82(a)(8). For funds not required to meet near term pay-out needs, it is acceptable if the policy offers the option of retaining those funds in the insurance mechanism.

22. Role and Rights of the Insurer

The insurer must invest all NRC decommissioning funds transferred from prepaid funds or an external sinking fund, and all earnings thereon, consistent with the prudent investor standard set forth in 18 CFR Part 35 Subpart E. This should be stated as a condition in the policy.

The policy may give the insurer the right to monitor all aspects of decommissioning to which the policy applies, and the right of reasonable access to the site. Moreover, the insured may be required to seek the insurer's review and approval of individuals and firms under consideration to perform decommissioning. Such provisions are subject to negotiation between the insurer and the insured and are problematic only if they interfere with NRC's regulatory controls and oversight of decommissioning or the decommissioning flexibility granted by § 50.59.

The staff shall evaluate whether there are policy provisions relating to "claims procedures" or "claims management," which indicate that the insurer will be involved directly in the review, adjustment, approval, and payment of claims for decommissioning expenses. These provisions are subject to negotiation between the insurer and the insured; however, actual payment of claims (i.e., cutting and sending checks) may best be performed through the trust. These provisions are problematic if they undermine the system of financial controls established under § 50.82(a)(8), or if they interfere with the insured's ability to complete decommissioning in a

timely manner and/or to perform decommissioning activities under plans approved by the NRC or orders issued by the NRC.

NOTE: The terms and conditions of the policy must be acceptable to the NRC. The NRC reserves the right to take the following steps to ensure an acceptable policy: either independently or in cooperation with the Federal Energy Regulatory Commission and the licensee's state Public Utility Commission, take additional actions as appropriate on a case-by-case basis, including ensuring or directing the addition or removal of clauses through written endorsement.

23. The Standby Trust Must Be Acceptable to NRC (§ 50.75(e)(1)(iii)(A)(2))

The terms of an acceptable standby trust would be similar to the sample standby trust language contained in Appendix B-3.2 of NUREG 1.159, Rev. 1. Licensees that are "electric utilities" (as defined in § 50.2) that use prepayment or external sinking fund trusts must include the terms and conditions found in § 50.75(h)(2) relating to disbursement or payments. Note that amended regulations applicable to decommissioning trusts of electric utility and non-electric utility licensees became effective on December 24, 2003. Section 50.75 requires that licensees that are not "electric utilities" (as defined in § 50.2) must include in their trusts the terms and conditions found in § 50.75(h)(1) relating to investment of funds (§ 50.75(h)(1)(i)), management of funds (§ 50.75(h)(1)(ii)), amendment of trusts (§ 50.75(h)(1)(iii)), and disbursement or payments from trusts (§ 50.75(h)(1)(iv)).

A tax-qualified decommissioning trust set up under 468A of the Internal Revenue Code and associated regulations is not likely capable of serving as a standby trust because the amounts that can be placed in such a trust are limited by the Commissioner of Internal Revenue.

However, a non-tax qualified trust potentially could serve as a standby trust if it meets the requirements noted above.

III. EVALUATION FINDINGS

The reviewer verifies that sufficient information has been provided to satisfy the requirements of this Standard Review Plan section and the underlying regulations, and concludes that his or her evaluation is sufficiently complete and adequate to support the conclusion to be included in the staff's safety evaluation report that the applicant has satisfied the NRC's decommissioning funding assurance requirements using insurance.

IV. IMPLEMENTATION

The following is intended to provide guidance to applicants and licensees regarding the NRC staffs plans for using this SRP.

Except in those cases in which the applicant proposes an acceptable alternative method for complying with specified portions of the NRC's regulations, the method described herein will be used by the staff in its evaluation of conformance with Commission regulations.

V. REFERENCES

U.S. Nuclear Regulatory Commission, *Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance*, NUREG-1577, Rev. 1.

C.L. Pittiglio, *Standard Review Plan for Evaluating Nuclear Power Reactor License Termination Plans*, NUREG-1700, Rev. 1 (April 2000).

U.S. Nuclear Regulatory Commission, *Assuring the Availability of Funds for Decommissioning Nuclear Reactors*, Regulatory Guide 1.159, Rev. 1 (October 2003).

U.S. Nuclear Regulatory Commission, *Decommissioning of Nuclear Power Reactors*, Regulatory Guide 1.184 (July 2000).

U.S. Nuclear Regulatory Commission, *Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness (Vol. 3)*, NUREG-1757 (September 2003).

Dated at Rockville, Maryland, this ____ day of July, 2004

For the Nuclear Regulatory Commission

_____/RA/_____
Catherine Haney
Program Director, Policy and Rulemaking Program

**PROPOSED FINAL SUPPLEMENT STANDARD REVIEW PLAN:
DECOMMISSIONING FUNDING INSURANCE
FOR POWER REACTORS**

I. AREAS OF REVIEW

The NRC is issuing this draft supplement to describe criteria that will be used by the staff to review power reactor license applicants' and licensees' insurance methods of providing required decommissioning funding assurance. This document provides detailed criteria with respect to section III.2(f)(4) of NUREG-1577, Rev. 1 and as such will supplement NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (October 2003).

II. ACCEPTANCE CRITERIA

Decommissioning funding insurance may be referred to by different names such as "decommissioning insurance," "decommissioning liability insurance," "decommissioning expense liability policy," etc. The label is much less important than (1) the terms and conditions of the policy relating to (a) the amount and scope of coverage and (b) the availability of funds, and (2) the qualifications of the issuer of the insurance policy. For these key elements, acceptance criteria are provided below.

Amount and Scope of Insurance Coverage

1. Per 10 CFR 50.75(b)(1), Amount of Coverage Equal or Greater than Table of Minimum Amounts (§ 50.75(c)) for NRC § 50.2 Decommissioning Costs (e.g., excluding cost of removal and disposal of spent fuel and non-radioactive structures and materials beyond that necessary to terminate the license) or a Site-Specific Decommissioning Cost Estimate (§ 50.75(b)(4)).

Confirm that the policy alone or in combination with other approved mechanisms for decommissioning funding assurance provides an adequate amount of coverage ("liability limit") for NRC decommissioning costs, the total amount being not less than the table of minimum amounts (§ 50.75(b)(1)). Although the "Declarations" section of the policy (often the cover page) typically shows the "limit of liability" or "face amount," it is important to review the entire policy. The amount of coverage should be a specific dollar number and not be a schedule or formula contingent on projected earnings under the policy. Coverage for amounts only in excess of the minimum amounts (or site-specific cost estimate) and up to the actual cost of decommissioning does not satisfy the regulations. The insurance policy when used alone should guarantee at least the total amount of currently estimated decommissioning costs (NUREG-1577, Rev. 1 § III.2.f(2)).

Determine whether the amount of coverage includes both NRC and non-NRC costs. If a policy covers both NRC and non-NRC costs, they should be separately identified and only NRC required costs should be assessed as equal to or greater than the minimum amount. See §§ 2.1.2 and 2.1.7 Regulatory Guide 1.159 Rev. 1 and NUREG-1577, Rev. 1 § III.2.a(3). The same approach should be used if the amount of coverage includes costs for onsite spent fuel management (see NUREG-1700, Rev. 1).

Evaluate whether there are any stated sublimits. In particular, a policy containing a sublimit for NRC costs lower than the minimum amount may render the policy non-compliant if no other mechanisms are in place, even if the sublimit applies only in the event of premature closure or only in the event of cancellation, termination, non-renewal or rescission of the policy.

Different limits for decommissioning that occur during the initial license period or during the period of license renewal may be acceptable.

The amount of coverage should be capable of being adjusted (§ 50.75(b)(2) and § 2.1.5, Regulatory Guide 1.159, Rev. 1), at least if no other approved mechanisms are to be used. Typically, an adjustment is done through an “endorsement.” Find any “changes” clause (see #14 below). A policy with limits that can be adjusted down but not upwards would require that another financial assurance mechanism make up the difference.

Determine whether there are any “deductibles.” A deductible may be called a “retention,” a “self-insured retention,” “self-insurance,” or other term. Typically, the deductible is expressed as a flat dollar amount that must be paid by the insured before the insurer's liability under the policy is triggered. A deductible is acceptable if the policy provides “first dollar coverage” of the deductible by the insurer. First dollar coverage means that the insurer is responsible for paying the deductible amount (e.g., into the standby trust fund), while the insured is separately responsible for reimbursing the insurer for the amount of the deductible. Another type of deductible involves the insured sharing in some defined proportion of the decommissioning expenses from a dollar starting point (termed the “attachment point”) until some defined dollar ending point. Absent first dollar coverage expressly provided by the policy, the licensee must provide another assurance mechanism in combination with insurance to cover deductible amounts or demonstrate that its sinking funds can cover the deductible(s) (§ 50.75(e)(1)(vi)). The combined amount should at least equal the amount required under 10 CFR 50.75 or, after permanent termination of operations, currently estimated decommissioning costs (NUREG-1577, Rev. 1 § III.2.f(2)).

2. Annual Adjustment of Minimum Amount of Coverage (§ 50.75(c)(2))

If this is not the first year the policy is used, determine whether the amount of coverage provided satisfies the currently required adjusted minimum amount.

3. Scope of Coverage (§ 50.2)

Verify the scope of coverage, which should be for NRC defined decommissioning (§ 50.2) costs. Relevant language defining the scope may appear in different sections of the policy, such as under “Insuring Agreement,” “Definitions,” “Exclusions,” “Conditions,” and “Declarations.”

Review any policy language that defines or limits covered decommissioning costs only as those incurred by reason of work performed during the policy period; such a limit is inconsistent with the payment of funds into the standby trust prior to decommissioning costs being incurred by the licensee by reason of work actually performed.

If the scope of the policy covers non-NRC costs (e.g., greenfield costs) as well as NRC costs, verify that coverage of non-NRC costs is limited in amount so that those costs do not draw on money intended for NRC costs. Similarly, if the policy covers spent fuel management financial

assurance (§ 50.54(bb)), verify that coverage of these costs also is limited in amount and will not draw on money intended for coverage under § 50.75 (see C.11 “Use of Funds” Regulatory Guide 1.184).

Determine if the scope of coverage has been restricted by any “exclusions” written into the policy. Exclusions of costs not intended to be covered under decommissioning, not appropriate for coverage under decommissioning insurance, and costs covered under other insurance programs should be acceptable.

Costs NOT intended to be covered under decommissioning include:

- operational expenses
- accident response (see § 50.54(w))
- repair or replacement of damaged property
- on-site spent nuclear fuel management (see § 50.54(bb))
- decontamination or cleanup prior to permanent cessation of operations
- transportation and disposal of spent fuel

Costs not appropriate under insurance for decommissioning funding:

- costs due to fraudulent, dishonest, or criminal acts, unless such acts result in decommissioning
- fines, penalties, etc. imposed for violation of federal or state law
- intentional, willful, or deliberate non-compliance, unless such acts result in decommissioning
- bodily injury/property damage*
- workers compensation, disability benefits, unemployment compensation*
- post-accident decommissioning*

Note: *Costs covered under other insurance.

It is common to find legal fees excluded from insurance coverage in liability policies. However, such costs related to decommissioning must be covered by decommissioning insurance if incurred.

NRC review should be based on the entire policy and all endorsements and not solely on any Certificate of Insurance provided or solely on the Declarations page.

Certainty of Coverage: Issuer Qualifications

4. Issuer Qualifications

Determine the identity of the issuer of the policy (not to be confused with any broker or agent involved in the transaction). The name and address of the issuer should be included in the policy (§ A.12.3, NUREG-1757).

Determine the principal place of business, i.e., “domicile” of the insurer, which may be a U.S. state or a foreign country where the insurer is incorporated. Special terms and conditions are appropriate for insurers domiciled outside of the U.S.

The insurer must be “licensed” to transact the business of insurance by authorities of the state where the relevant nuclear plant is located (§ 2.3.3, Regulatory Guide 1.159 Rev. 1), or approved or not objected to by such state authorities after notice to the state. One can verify that the insurer is licensed by checking with the insurance commission or agency in that state; many states provide on-line directories of their licensed insurers. The insurer should be able to provide written evidence of approval or non-objection by the state insurance regulatory authority for the State in which the plant is located.

Where practical, review databases or reference documents to determine whether the insurer is a commercial firm capable of selling policies to anyone or is instead an organization-- termed a “captive,” a “risk retention group (RRG),” or “mutual” insurer -- that can sell insurance only to one or a limited number of reactor owners.

A policy issued by a captive insurer that covers only a single owner's reactor(s), often termed a “pure captive,” will be problematic. Such a policy is synonymous to self-insurance, which NRC regulations do not permit in the absence of additional required financial qualifications.

A mutual, captive, or RRG that can insure more than a single owner's reactors also may be problematic unless the insurer covers a relatively large number of owners and reactors. Even if the insurer covers more than a single owner's reactors, the insurer still may not provide reasonable assurance of decommissioning funding due to insufficient capitalization, risk transfer, and risk distribution, among other factors.

A group captive, RRG, or mutual insurer is acceptable if:

- (a) the Internal Revenue Service has issued a letter ruling finding that premiums paid to the insurer will be considered deductible for tax purposes, and
- (b) the issuer of the insurance policy has received a financial strength or safety rating of A- or better from A.M. Best, A- or better from Standard & Poor's, A-3 or better from Moody's, A- or better from Fitch, or B- or better from Weiss Rating, as its most recent, issuer-specific rating, provided that the insurer has received a rating. An insurer should be able to show that it has requested a rating from the agencies listed above where a rating has not yet been assigned.

NOTE: The issuer of the policy must be acceptable to the NRC. As required for nuclear energy liability insurance, the Commission may require proof that the organization or organizations which have issued policies are legally authorized to issue them and do business in the United States and have clear ability to meet their obligations (§ 140.18(a)).

5. The Trustee of the Standby Trust Must Be Acceptable to NRC (§ 50.75(e)(1)(iii)(A)(2))

An acceptable trustee includes (1) an appropriate State or Federal government entity or (2) an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State Agency (§ 50.75(e)(1)(iii)(A)(2)). See § 2.2.6 of Regulatory Guide 1.159, Rev. 1 for information on verifying the acceptability of financial institutions as

trustees. One can also use § 4.3.2.15 of NUREG-1757, Vol. 3 to determine the acceptability of a non-government trustee.

Certainty of Coverage: Terms and Conditions of Policy

6. Covered Licensee(s)

The policy must include the name and address of the covered licensee(s), their NRC license number(s), and the name(s) and address(es) of the covered facility(ies), (§ A.12.3, NUREG-1757).

7. Licensee's Regulatory Obligations

The policy should contain a statement of the licensee's regulatory obligations as the reason for the policy.

8. Duration/Term of Coverage (§ 50.75(e)(1)(iii)(A)(1))

The policy must state an "effective date" (or "inception date") and may state an expiration or termination date.

Verify that the term of coverage either is open-ended, or, if written for a specified term ending on a particular date, that the policy is automatically renewed, unless the issuer notifies NRC, the beneficiary, and the licensee of its intent not to renew; as stated by § 50.75(e)(1)(iii)(A)(1), such a provision must require notice at least 90 days prior to the renewal date, as evidenced by return receipts.

9. Cancellation/Termination and Non-Renewal

The policy should require a minimum of 90 days prior notice to NRC, as evidenced by return receipts, of the insurer's or the insured's intent to cancel, non-renew, or terminate the policy (§ A.12.3, NUREG-1757, Vol 3, & § 50.75(e)(1)(iii)(A)(1) (for non-renewal only)).

It is acceptable if the policy states that the insurer may cancel or terminate the policy if the premium is not paid. Some policies may provide only a short period (e.g., 10 days) prior to cancellation/termination in the event of non-payment of premium. Such a short period is not acceptable, because it does not allow sufficient time for the licensee to arrange alternative coverage or for NRC to take appropriate action prior to its cancellation/termination if the licensee fails to provide an acceptable substitute. A period of 90 days should be the minimum following notice to NRC and the insured. A provision stating that the insurer may not cancel, terminate, or non-renew the policy if the licensee is named as a "debtor in bankruptcy proceedings" is desirable.

The above provisions relating to cancellation are inapplicable to policies that cannot be canceled.

10. Automatic Payment Prior to Cancellation/Termination/Non-renewal (§ 50.75(e)(1)(iii)(A)(1))

The insurance policy must provide that the full "face amount" for NRC decommissioning costs be paid to the beneficiary (i.e., decommissioning trust) automatically prior to policy cancellation/

termination/non-renewal “without proof of forfeiture” if the licensee fails to provide a replacement acceptable to the NRC within 30 days after the licensee or NRC receives notice of cancellation/termination/non-renewal, as evidenced by return receipts (§ 50.75(e)(1)(iii)(A)(1) provides 30 days after notice of intent to cancel). An insurance policy may specify more than one face or pay-out amount, but only the smallest pay-out amount will be accepted to determine compliance with the regulatory minimum amount. For pay-out amounts that are not expressed as absolute numbers but must be calculated using one or more variables whose values are not known or provided to the NRC, the reviewer will calculate those pay-out amounts conservatively, using values for the variables that yield the lowest amounts.

11. Beneficiary

The “beneficiary” should be the standby trust, but may be defined as the licensee of the covered facility. A policy should be acceptable even if it does not designate a beneficiary, so long as it guarantees that funds drawn from the policy must be paid into the standby trust (see #21 below).

12. Bankruptcy or Insolvency of the Insured

The policy should contain a provision to the effect that bankruptcy or insolvency (a condition of financial distress) of the insured does not relieve the insurer of any of its obligations.

13. Primary Not Excess Insurance

The policy under review may contain a clause to the effect that if the licensee has other valid and collectible insurance applicable to radiological decommissioning, then the decommissioning insurance shall be “excess insurance” over such other coverage. This is acceptable because licensee property insurance may cover radiological decommissioning in certain circumstances. It also would be acceptable for the policy to designate its radiological decommissioning coverage as “primary,” with respect to all other applicable insurance coverages. In order to avoid delays in decommissioning due to any disputes regarding priority of coverage, the NRC shall treat the policy first issued as primary in the event of such disputes. If a radiological decommissioning policy also provides coverage for non-radiological decommissioning and/or for 10 CFR 50.54(bb) spent fuel management, the policy shall specify that such coverage is primary as to any other applicable coverage for non-radiological decommissioning and/or spent fuel management.

14. Changes

The policy should state that its terms shall not be waived or changed except by written “endorsement”¹ issued to form a part of the policy and unless sixty days prior written notice has been given to the NRC, and the NRC has not objected within that time. A clause that permits the insurer and the insured to agree to changes in the policy over the disapproval of the NRC is not acceptable.

15. Designated Agent

The policy should identify an agent of the insurer who is to receive all notices and other required communications and whose requests, demands, and agreements are deemed to have

been made directly by the insurer (see, for example, clause 16 in 10 CFR § 140.91). Complete contact information should be provided in the policy.

16. Authorized Signatories (§ 2.1.3, Regulatory Guide 1.159, Rev. 1)

The policy must be signed and dated. The parties signing the policy must be authorized to act for the licensee and the insurer in the transactions. A duly authorized representative may be either a named individual or any individual occupying a named position. All required signatures should be notarized. For a licensee that is a corporation or limited liability company, a principal executive officer of at least the level of vice president should sign; for a licensee that is a municipality, state, Federal, or other public agency, either a principal executive officer or ranking elected official should sign. A person is deemed to be a duly authorized representative if the person is authorized in writing by an individual described above, and the authorization specifies either an individual or a position having responsibility for the overall operation of the reactor or power company, such as the position of plant manager, a superintendent, or person of equivalent responsibility.

17. Original, Conformed Copy, or Photocopy of Original (§ 2.1.4, Regulatory Guide 1.159, Rev. 1)

NRC may review the original, a conformed copy, or a photocopy of the original policy. A conformed copy is a word for word copy of a document, which may be marked “conformed copy.” A conformed copy may substitute the printed or typewritten name of each signatory in place of each signature. If the copies are not signed, they should be accompanied by a declaration signed by an officer authorized to sign for the organization, certifying that they are “complete and accurate copies” of the original document. A photocopy is produced by a process that accurately reproduces the original and is marked as a “copy.” An originally signed duplicate is a conformed copy or photocopy that bears originally handwritten signatures.

18. Policy Must Conform to or Not Violate Applicable State Law (§ 2.3.1, Regulatory Guide 1.159, Rev. 1)

A determination that the policy conforms to or does not violate applicable state law can be based on opinion letters, which are best provided by an independent law firm or lawyer who practices insurance law and/or by an insurance broker's in-house counsel, so long as there is no conflict of interest (e.g., the broker does not represent the issuer of the policy). The opinion letter should identify the state whose law is applicable (e.g., the state where the reactor is located, the state where the policy is issued) and should state that the policy conforms to or does not violate the laws of that state. The counsel signing the letter should be admitted to the bar of the state whose law is at issue and the letter should so state; NRC can confirm the lawyer's bar admission by contacting the state bar association or by checking with legal reference books (e.g., Martindale-Hubbell Law Directory).

¹ An “endorsement” is a document that is treated as an integral part of the policy although it typically is issued later. Endorsements will be labeled as such and numbered.

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For electric utility licensees and non-electric utility licensees with access to non-bypassable charges, the licensee's State public utility commission must have approved the use of the insurance policy or raised no objection to the use of the particular policy. There should be some documentation of such approval or non-objection (e.g., correspondence between the licensee and Public Utility Commission).

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The policy should contain a provision allowing "assignment" (i.e., transfer) of the policy to a successor licensee. The policy may specify that the assignment is conditional upon the consent of the insurer so long as the policy also states that such consent "will not be unreasonably refused." Right of assignment enables a licensee to redeem value from the policy if ownership or operation of the covered facility is transferred to a new party. The insurer may want the right to consent to or refuse assignment in order to protect itself against transfers of ownership or operation that would unfairly prejudice the interests of the insurer in a manner not contemplated originally (e.g., transfer of the facility to an insolvent owner). Refusal to consent to assignment would be "unreasonable" where the interests of the insurer are not prejudiced by a successor licensee replacing the original insured party.

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The insurance policy must be payable to a trust established for decommissioning costs (§ 50.75(e)(1)(iii)(A)(2)). The trust may or may not be identified in the policy as the "beneficiary" of the insurance.

If there are any conditions or limitations in the policy regarding payments to the trust fund, these should be assessed for their impact on availability and certainty of financial assurance. For example, the policy should not state that payments shall be made only on the "default" of the licensee to satisfy decommissioning requirements.

A policy may identify several different parties to whom proceeds are payable, and these will need to be reviewed and clarified; NRC should expect that improvements in drafting can eliminate any ambiguities and inconsistencies in the policy.

Although the regulations clearly state that the insurance must be payable to a decommissioning trust, they do not state when or how to make the payments. Any policy terms that would impact the timing and amount of payments into the trust fund should be reviewed from the point of view of the guiding principle of having reasonable assurance of having funds when needed. The NRC's decommissioning regulations contemplate that decommissioning payments will be made from the trust and not by the insurer, so the insurer must timely transfer ample funds to the trust, if not all the funds covered by the policy at once, on a schedule consistent with access to funds allowed by § 50.82(a)(8). For funds not required to meet near term pay-out needs, it is acceptable if the policy offers the option of retaining those funds in the insurance mechanism.

22. Role and Rights of the Insurer

The insurer must invest all NRC decommissioning funds transferred from prepaid funds or an external sinking fund, and all earnings thereon, consistent with applicable state standards, or where no such standards apply, the prudent investor standard set forth in 18 CFR Part 35 Subpart E. This should be stated as a condition in the policy.

The policy may give the insurer the right to monitor all aspects of decommissioning to which the policy applies, and the right of reasonable access to the site subject to NRC requirements.

The staff shall evaluate whether there are policy provisions relating to “claims procedures” or “claims management,” which indicate that the insurer would be involved directly in the review, adjustment, approval, and payment of claims for decommissioning expenses or in any approval of decommissioning activities. These provisions are problematic and are not allowed in an insurance policy.

NOTE: The terms and conditions of the policy must be acceptable to the NRC. The NRC reserves the right to take the following steps to ensure an acceptable policy: either independently or in cooperation with the Federal Energy Regulatory Commission and the licensee's state Public Utility Commission, take additional actions as appropriate on a case-by-case basis, including ensuring or directing the addition or removal of clauses through written endorsement.

23. The Standby Trust Must Be Acceptable to NRC (§ 50.75(e)(1)(iii)(A)(2))

The terms of an acceptable standby trust would be similar to the sample standby trust language contained in Appendix B-3.2 of Regulatory Guide 1.159, Rev. 1. Licensees that are “electric utilities” (as defined in § 50.2) that use prepayment or external sinking fund trusts must include the terms and conditions found in § 50.75(h)(2) relating to disbursement or payments. Note that amended regulations applicable to decommissioning trusts of electric utility and non-electric utility licensees became effective on December 24, 2003. Section 50.75 requires that licensees that are not “electric utilities” (as defined in § 50.2) must include in their trusts the terms and conditions found in § 50.75(h)(1) relating to investment of funds (§ 50.75(h)(1)(i)), management of funds (§ 50.75(h)(1)(ii)), amendment of trusts (§ 50.75(h)(1)(iii)), and disbursement or payments from trusts (§ 50.75(h)(1)(iv)).

III. EVALUATION FINDINGS

The reviewer verifies that sufficient information has been provided to satisfy the requirements of this Standard Review Plan section and the underlying regulations, and concludes that his or her evaluation is sufficiently complete and adequate to support the conclusion to be included in the staff's safety evaluation report that the applicant has satisfied the NRC's decommissioning funding assurance requirements using insurance.

IV. IMPLEMENTATION

The following is intended to provide guidance to applicants and licensees regarding the NRC staffs plans for using this SRP.

Except in those cases in which the applicant proposes an acceptable alternative method for complying with specified portions of the NRC's regulations, the method described herein will be used by the staff in its evaluation of conformance with Commission regulations.

V. REFERENCES

U.S. Nuclear Regulatory Commission, *Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance*, NUREG-1577, Rev. 1.

C.L. Pittiglio, *Standard Review Plan for Evaluating Nuclear Power Reactor License Termination Plans*, NUREG-1700, Rev. 1 (April 2000).

U.S. Nuclear Regulatory Commission, *Assuring the Availability of Funds for Decommissioning Nuclear Reactors*, Regulatory Guide 1.159, Rev. 1 (October 2003).

U.S. Nuclear Regulatory Commission, *Decommissioning of Nuclear Power Reactors*, Regulatory Guide 1.184 (July 2000).

U.S. Nuclear Regulatory Commission, *Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness (Vol. 3)*, NUREG-1757 (September 2003).

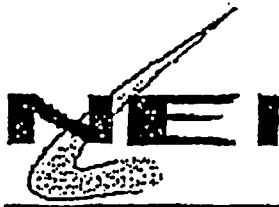
PUBLIC COMMENTS
ON DRAFT SUPPLEMENT
STANDARD REVIEW PLAN

Attachment 3

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11/19/04
69 FR 43277
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NUCLEAR ENERGY INSTITUTE

FAX Cover Sheet

To: CHIEF, RDB
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From: RICHARD MYERS
Company: Nuclear Energy Institute
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Fax: 202.293.3056

Date & Time: 18 AUGUST 2004
Pages including cover sheet: 14

Comments:

NEI COMMENTS ON NUREG-1577, Rev. 1,
69 FED. REG. 43,278 (July 19, 2004)

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(MAD1)

Template = ADM-013



NUCLEAR ENERGY INSTITUTE

Richard J. Myers
SENIOR DIRECTOR, BUSINESS
& ENVIRONMENTAL POLICY

August 18, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Comments on NUREG-1577, Rev. 1, Draft Supplement to Standard Review Plan Decommissioning Funding Insurance for Power Reactors 69 Fed. Reg. 43,278 (July 19, 2004)

Dear Sir:

The Nuclear Energy Institute ("NEI"), on behalf of the nuclear industry,¹ is pleased to comment on the draft Supplement to Standard Review Plan ("SRP") on Decommissioning Funding Insurance for Power Reactors (69 Fed. Reg. 43,278 (July 19, 2004)).

NEI supports the NRC's development of this guidance for the use of insurance as a mechanism for providing reasonable assurance that decommissioning funds will be available when required. Insurance is a method of decommissioning funding permitted by the NRC regulations, but has not yet been developed as a product offered by any insurers (except for coverage involving an accident). The SRP will help prospective insurers understand NRC's requirements and provide this coverage. In addition, the various methods of decommissioning funding allowed by the NRC rules are intended to provide flexibility to licensees on how they provide financial assurance, and facilitating the development of viable decommissioning insurance policies will promote that important goal. Finally, the existence of viable decommissioning insurance may be very important to the next generation of nuclear plants, likely to be developed by merchant generators. For all these reasons, NEI strongly encourages the NRC to issue the guidance.

NEI does have a number of concerns about the draft Supplement to the Standard Review Plan, however. These are discussed in detail in the Enclosure to this letter.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, nuclear insurers, and other organizations and individuals in the nuclear energy industry.

Comments on NUREG-1577, Rev. 1, Draft Supplement to Standard Review Plan
Decommissioning Funding Insurance for Power-Reactors
August 18, 2004
Page 2

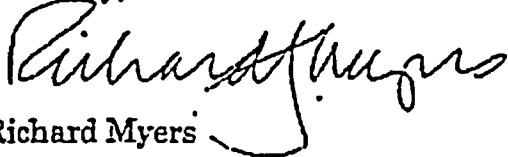
NEI strongly urges the NRC to amend the draft Supplement to address these concerns before issuing it in final form.

NEI is aware of two proposals for decommissioning insurance that have been submitted to the NRC. The NRC should endeavor to make the draft SRP as consistent with those proposals as the NRC's regulatory objectives allow, because the two pending proposals represent products that have been structured with considerable effort to balance NRC, tax, insurance and commercial needs. For example, under the Internal Revenue Service's regulations, an insurer must demonstrate that its coverage involves a sufficient transfer of risk in order to be allowed to establish loss reserves offsetting the income that would otherwise be taxable when premiums are received. Thus, a product that proposes simply to return invested premiums and earnings to an insured licensee at the time of decommissioning would not qualify as insurance. An insurer must also structure its coverage and reserves to meet the requirements of the insurance commissioner for the state in which it is licensed. At the same time, an insurer must establish customary and reasonable commercial terms to protect its business interests, including reasonable exclusions and claims management provisions. NEI urges the NRC to recognize that a viable decommissioning insurance product can only be offered if all of these needs are balanced.

More detailed comments are provided in the enclosure to this letter. These comments have been developed in consultation with the sponsors of both decommissioning insurance proposals pending before the NRC. These comments therefore seek to balance the NRC's regulatory objectives with other applicable legal requirements and with commercial needs. If you have any questions on these comments, please contact me at (202) 739-8021.

Once again, we appreciate the opportunity to provide these comments and urge the Commission to adopt criteria that will allow insurance to become a viable decommissioning funding mechanism in the United States.

Sincerely,



Richard Myers

Enclosure

Enclosure

NEI Comments on Draft Supplement to Standard Review Plan
Decommissioning Funding Assurance for Power Reactors (69 Fed. Reg. 49,278)

The comments below relate to the acceptance criteria in section II of the draft Standard Review Plan ("SRP") and are presented in the order raised by the SRP. The numbers and headings below correspond to those used in the SRP.

II. Acceptance Criteria

The draft SRP states that the name of the policy is much less important than "the certainty of availability of funds." It would be more appropriate to refer to the "degree of certainty" or "reasonable assurance" of the availability of the funds, to avoid any unreasonable suggestion that absolute certainty is required. Absolute certainty cannot be provided for any product qualifying as true insurance and, in fact, is not provided by any other decommissioning funding mechanism. NRC rules themselves require "reasonable assurance that funds will be available for the decommissioning process." 10 C.F.R. § 50.75(a).

1. Amount of Coverage As Related to 10 CFR 50.75(b)(1)

The SRP should recognize and indicate explicitly the acceptability to NRC of insurance offered in combination with other decommissioning funding methods. A combination of funding methods is permissible under the existing NRC regulations. See 10 C.F.R. § 50.75(e)(1)(iv). The draft SRP, for example, calls for the policy coverage to provide an amount of coverage not less than the table of minimum amounts in 10 C.F.R. § 50.75(b)(1). 69 Fed. Reg. at 49,278. Clearly, a combination of methods can be used to meet NRC's minimum funding assurance requirements, such as the combination of insurance coupled with the prepayment method, e.g., funds accumulated in the nuclear decommissioning trust funds (NDTs) as proposed by Nuclear Electric Insurance Ltd. (NEIL). Insurance could also be used in combination with the external sinking fund method accumulating additional funds over time (for licensees that qualify to use this method) or along with a parent company guarantee to make up any shortfall in the insurance. When a combination of methods is used, it is the total assurance provided by the combination of methods that must satisfy NRC's minimum funding assurance requirements and not the insurance (or any other single method) in isolation.

The SRP should also recognize that a licensee's decommissioning funding obligation could be based on a site-specific decommissioning cost estimate that is less than the minimum formula amount, if the NRC has approved that lower funding level either through an exemption or, if at the end of the plant life, through acceptance of a site-specific cost estimate in a Post-Shutdown Decommissioning Activities Report

(PSDAR), License Termination Plan (LTP), or Decommissioning Plan (DP). The SRP should recognize these possibilities.

The statement in the draft SRP that "[t]he insurance policy should guarantee the total amount of currently estimated decommissioning costs" (69 Fed. Reg. at 43,278-79) should recognize that a combination of methods may be used. Moreover, this statement goes beyond the NRC regulations, which require only that the funding assurance exceed the formula amounts. While a proposed policy may choose to provide coverage (either alone or in combination with another method) exceeding a current, site-specific estimate, the NRC should recognize that such coverage is not required by the NRC's rules. In addition, the word "guarantee" should be avoided, because it suggests an absolute level of assurance that is inconsistent with the concept of insurance. Providing "reasonable assurance" of a level of funding is the appropriate standard.

The draft SRP states that the "amount of coverage should be a specific dollar number and not be a schedule or formula contingent on projected earnings under the policy." *Id.* at 43,278. This sentence should state that "the minimum amount of coverage should be a specific dollar amount." There could be situations where a policy a certain amount meeting NRC requirements, but offers additional coverage in certain circumstances. For example, NEIL's proposed policy increases the policy limit if a covered unit renews its operating license and operates beyond the original license expiration date. Alternatively, a policy may provide for reductions in the policy limits under certain circumstances pursuant to a pre-determined methodology. As long as the base coverage or minimum amount of coverage (and any other funding mechanisms provided by the licensee) meet the NRC minimum requirements, the NRC should not impose any constraints on provisions that allow increases in coverage.

The draft SRP states that if a policy covers both NRC and non-NRC costs (e.g., site restoration costs and spent fuel management costs), they should be separately identified. 69 Fed. Reg. at 43,279. This proposed position is problematic for a number of reasons. First, creating sub-limits for separate categories of costs would adversely affect risk transfer allocations required to demonstrate that the coverage constitutes insurance for tax purposes. Second, providing separate limits would be administratively burdensome and disadvantageous. Because site-specific decommissioning cost estimates are not exact, establishing sub-limits based on estimates for each of these categories of costs may prevent an insured licensee from obtaining the maximum value of the insurance if the actual cost allocation later differs from allocations predicted in the prior estimates. For example, for a policy that otherwise had an overall limit of 100, the creation of sub-limits might result in 80 for NRC costs and 20 for non-NRC costs. If actual costs were 85 and 10, the creation of sub-limits would result in insurance coverage of just 90 and a shortfall of 5, whereas without sub-limits the insurance would pay all 95 in costs.

In addition, licensees would be required to implement a system of classifying and allocating costs, which would increase the administrative expense. Such accounting is not required for the licensees currently using trusts to pay for ongoing decommissioning, so it is unclear why such limitations should be imposed if decommissioning is paid through insurance. Further, establishing a separate coverage for non-radiological decommissioning costs (site restoration costs) is unnecessary. These costs are relatively small compared to the radiological decommissioning costs. With the exception of costs to conduct initial non-radiological site surveys or other site characterization, such costs are generally incurred after completion of radiological decommissioning (*i.e.*, buildings are decontaminated to NRC release limits before they are demolished, and grading and re-vegetation of the site occurs after structures are demolished).

As an alternative to creating sub-limits, NRC could require simply that insurance provide a priority for NRC's basic radiological costs as defined in 10 C.F.R. § 50.75. For example, a policy should be acceptable if it provides that these NRC costs have priority and that payment of claims for other costs would only be made if such categories of costs are specified in a PSDAR, LTP, DP or other similar submittal that has been subject to NRC review.

The draft SRP states that the amount of coverage should be capable of being adjusted. *Id.* While a licensee is responsible for periodically adjusting its funding assurance to maintain compliance with NRC requirements, the need for the licensee to adjust its level of funding assurance when necessary should not be translated into a requirement for an automatic adjustment to the insurance policy limit. For example, in the case of NEIL's proposed insurance, compliance with NRC's funding requirements would be provided by the combination of insurance and the qualified trust funds, and any periodic adjustment to meet NRC requirements after purchase of the insurance would be accomplished by the licensee by additional contributions to the trust funds (or by any other method permitted by NRC's regulations). Even where insurance is offered as the sole funding mechanism, any necessary adjustment could be provided by the licensee by purchasing additional insurance, rather than by some automatic increase by the insurer in the policy limit. Moreover, automatic adjustment of the policy limits would likely present tax problems. For example, an automatic escalation of the policy limit based on the earnings on the invested premiums likely would not provide sufficient risk transfer for the coverage to qualify as insurance for tax purposes.

The draft SRP states that deductibles may be called a retention, a self-insured retention, self insurance, "or other euphemism." 69 Fed. Reg. at 43,279.

Euphemism means the substitution of an inoffensive term for one that is considered explicitly offensive. Since there is nothing offensive or wrong about deductibles, this choice of words is inappropriate.

3. Scope of Coverage

The draft SRP states that the NRC should "[v]erify the scope of coverage, which should be for NRC (§ 50.2) defined decommissioning costs." 69 Fed. Reg. at 48,279. The draft SRP should call for verification that the scope of coverage "includes" NRC defined decommissioning costs, but should not preclude coverage for additional costs incurred after a plant permanently ceases operation.

With respect to the scope of coverage, the draft SRP calls for review of any policy limit that defines covered decommissioning costs only as those incurred by reason of work performed because "such a limit is inconsistent with the payment of funds into the standby trust prior to decommissioning costs being incurred." *Id.* This guidance is fundamentally inconsistent with the concept that insurance is an indemnity to pay for losses that have been incurred. Moreover, this could present a significant impediment to obtaining state insurance commissioner approval or the necessary determination from the IRS that arrangements constitute insurance for tax purposes.

The guidance appears to contemplate that the insurance policy would pay a fixed amount into a standby trust upon commencement of decommissioning. Such a fixed payment obligation would likely not result in a sufficient risk transfer to qualify the product as insurance for tax purposes.¹ Moreover, it is commercially unreasonable to expect any insurer to pay claims without regard to whether the costs have been incurred and are covered by the Policy. Consequently, in order to make insurance the viable method intended by NRC's regulations, the SRP must recognize and allow a claims payment process where an insurer promptly reimburses the licensee for insured costs actually incurred and as they are incurred.

Consistent with the proposed Acceptance Criterion 21, NRC's guidance should focus on the need to assure that the mechanisms in place for payment of claims will provide sufficient and timely payments to the trust (or directly to vendors as directed by the Trustee) so that bills are paid in a timely manner when they become due. Modern technology such as email communications, electronic signatures, and electronic transfers of funds, make it relatively easy to arrange for the instantaneous, timely remittance of funds. Notably, an insurer will have every incentive to assure that vendors' bills are paid on a timely basis, because failure to do so will increase vendors' charges and therefore the cost of decommissioning, all to the disadvantage of the insurer.

Also with respect to the scope of coverage, the draft SRP states that legal fees related to decommissioning must be covered by decommissioning insurance if

¹ The transfer of investment risk is not sufficient to qualify the product as insurance.

incurred. This guidance is too broad and does not appear to be necessary to meet the NRC's regulations and objectives. For example, having the insurance pay for the legal fees associated with commercial litigation between the licensee and a decommissioning contractor may not serve to complete actual radiological decommissioning work, but rather may only reduce the funds available to perform actual work. Depending upon the circumstances, insuring legal fees could foster protracted litigation and could subject an insurer to a significant liability that cannot be priced when the policy is issued. Thus, mandating that insurance pay legal fees would be counter-productive, because it could make fewer insurance proceeds available for decommissioning, rather than more. In contrast, the insurer will be economically motivated to reduce the overall cost of decommissioning, and therefore, the insurer is in the best position to oversee the judgment as to whether investing funds in litigation with vendors is likely to reap sufficient returns to outweigh the costs. An acceptable policy should therefore provide that the insurer may authorize legal expenses for vendor litigation, but such expenses are not recoverable under the policy unless they are pre-approved by the insurer.

Licensees may recognize that certain legal costs associated with the administration of trust funds, the payment of claims, and obtaining required regulatory approvals (e.g., the costs of participating in an NRC adjudicatory hearing on approval of the LTP) are part of the decommissioning process. These types of costs may be included in an insured's site-specific cost estimates, and therefore, these costs could be within the scope of the insurance coverage, if they are identified and capable of being estimated as part of the underwriting process. At a minimum, the SRP should distinguish between legal fees associated with commercial litigation or tort claims and legal fees incurred to obtain NRC approvals of a license termination plan.

4. Issuer Qualifications

The draft SRP states that special terms and conditions are appropriate for insurers domiciled outside of the U.S. It is unclear whether "domicile" refers to where the insurer is incorporated or where it is licensed and has its principal place of business. If the insurer is licensed and has its principal place of business in the United States, there should be no need for any special terms or conditions, even if the insurer is incorporated overseas (for example, in Bermuda, as is common). If the insurer is licensed by a State, it will be subject to regulation by that State's insurance commissioner and will be subject to the jurisdiction of U.S. courts. NEIL, for example, is incorporated in Bermuda but licensed by and has its principal place of business in Delaware, and it is currently relied on to provide the property insurance required under 10 C.F.R. § 50.54(w). In fact, the NRC preempted conflicting state laws so that Texas municipalities could purchase insurance from NEIL. 52 Fed. Reg. 28,963 (Aug. 5, 1987).

The draft SRP also states that authorities of the State where the nuclear plant is located must license the insurer. This position is also unnecessary and inconsistent with insurance regulation. For example, insurance may be issued by a risk retention group (RRG) that is organized and chartered in one state in compliance with the Federal Liability Risk Retention Act of 1986. 15 U.S.C. § 3901 *et seq.* Such an RRG does not become licensed in other states, but rather is required to meet certain reporting requirements. 15 U.S.C. § 3902(d). Requiring licensing in each state is inconsistent with the federal statutory scheme for RRGs. Yet, NRC's guidance itself acknowledges that an RRG may be an acceptable issuer of decommissioning funding insurance.

In addition, many States exempt insurance companies from licensing requirements if the insurance is issued to an "industrial insured" or if an insured procures insurance independently outside of the jurisdiction. Thus, for example, NEIL, which provides the property damage coverage for U.S. reactors, is licensed only in Delaware and Bermuda, and provides coverage in certain other jurisdictions pursuant to statutory exemptions. In the event such an exemption is not available, NEIL requires its insured to purchase and accept delivery of its policy in Delaware. If a licensee proposes to use decommissioning insurance, it is appropriate for the NRC to seek confirmation that the insurance is offered, issued, and delivered properly, but a requirement for licensing in every jurisdiction would simply subject the insurer to unnecessary and duplicative regulation in a multitude of jurisdictions.

The draft SRP states that a captive insurer that covers only a single owner's reactors will be problematic, because such coverage would be synonymous with self insurance, which the NRC regulations do not permit. 69 Fed. Reg. at 48,279.² The question of whether or not an insurer for a single owner's plants is acceptable should be decided based upon whether or not there is adequate risk diversification for the proposed insurance company. Such coverage would not be the same as an internal reserve, which the NRC regulations prohibit, because the coverage would be provided by a separate company, regulated by a State's insurance commissioner, and backed by invested assets meeting the State's solvency requirements. Moreover, the funds would be available to the insured licensee only when payable as a claim under the policy. Thus, unlike an internal reserve, the funds would not be commingled with the licensee's assets or controlled by the licensee. Because the funds would be maintained in a separate insurance company, they would be outside the reach of creditors in the event of the licensee's bankruptcy, and thus, the funds held in the single owner insurance company may well be better protected and preserved to provide assurance for decommissioning, than existing NDTs, which are only protected by the bankruptcy court's mandate to act in the public interest.

² This statement is not entirely correct in that the NRC regulations do allow for self-guarantees. See 10 C.F.R. § 50.75(c)(1)(iii)(C).

The draft SRP states that a mutual, captive or risk retention group (RRG) that can insure more than a single owner's reactors also may be problematic unless the insurer covers "a relatively large number of owners and reactors." This position should be clarified to address specifically the issue at hand, whether the insurer will have adequate financial resources. Whether an insurer is organized as a stock or mutual company is not related to its spread of risk or the adequacy of its financial resources. For example, FM Global and Liberty Mutual are two of the world's largest insurers, notwithstanding that they are organized as mutuals. Mutual insurers should be permitted if they demonstrate that risk is sufficiently pooled and diversified, or that they have adequate resources. Such a demonstration will depend on a number of factors and should be made on a case-by-case basis. NRC can properly rely upon actuarial analyses conducted to support a particular insurance program, as these same analyses will be reviewed and evaluated by at least one state insurance commissioner in approving the insurance program.³

The draft SRP states that a group captive, RRG or mutual insurer is acceptable if the IRS has issued a ruling finding that the premiums paid by the insurer will be considered deductible for tax purposes, and if the issuer has received certain investment ratings from rating agencies. These criteria are inappropriate.

A private letter ruling may be important to a new captive insurer to protect itself against unintended tax liability, but it is not required. NRC need only be concerned that there is a reasonable basis for the tax treatment that is assumed in the economic analyses supporting the proposed insurance company. Once again, NRC can rely on the fact that a state insurance commissioner will also review and evaluate those same assumptions. Moreover, a private letter ruling is not an indicator of the insurer's financial strength. To the contrary, the private letter ruling is primarily an indication that the insurer is assuming sufficient risk for its product to be considered insurance (i.e., the IRS is more likely to issue the requested ruling if the risk assumed by the insurer is high). Finally, deductibility of insurance premiums is not a requirement for insurance to be a viable method of providing financial assurance for decommissioning.

With respect to the proposed requirements regarding financial ratings, the NRC's criteria would likely effectively foreclose any newly formed insurance company from offering decommissioning insurance. Rating agencies do not routinely assign a rating to a newly formed entity. Rather, rating agencies typically require several years worth of earnings history before providing ratings. Moreover, it is not clear

³ The real issue relating to insurers organized as mutuals, captives and RRGs is the statutory requirement that they be owned by their insureds, which may be a problem for certain municipalities that may not own stock in a private corporation or become a member of a mutual.

why an A.M. Best rating should be required for a new decommissioning funding insurer. For example, NEIL has provided billions of dollars of insurance coverage in the nuclear industry in order to meet NRC requirements (e.g., 10 C.F.R. § 50.54(w)) throughout the 1980s and 1990s, but it did not receive an A.M. Best rating until 1998, 18 years after it began offering insurance. Accordingly, the NRC should delete both of these criteria, and should instead evaluate each new insurance proposal on a case-by-case basis, with considerable deference given to the solvency requirements of the insurance commissioner of the State in which the insurer is licensed.

5. Trustee Must be Acceptable to NRC
6. Covered Licensee(s)
7. Licensee's Regulatory Obligations are Reason for Policy
8. Policy Term
11. Beneficiary
12. Bankruptcy or Insolvency of the Insured
14. Changes
15. Designated Agent
17. Copies
20. Assignment

Several Acceptance Criteria are proposed under 5, 6, 7, 8, 11, 12, 14, 15, 17, 20, regarding various policy terms. These criteria appear to be appropriate.

9. Cancellation/Termination and Non-Renewal
10. Automatic Payment Prior to Cancellation/Termination/Non-Renewal

The draft SRP specifies certain notice and payment requirements for cancellation or termination. The draft SRP should clarify that these provisions are inapplicable to a policy that cannot be cancelled.

The draft SRP states that the policy must provide for payment of the "full face amount" in the event that a policy is canceled, terminated or not renewed and the licensee fails to provide an acceptable substitute. The SRP should recognize that an insurance policy may specify several face amounts that apply in different situations, including a face amount applicable if a policy is terminated because of non-payment of premiums, material breach, or fraud. The SRP should clarify that it is the applicable face amount that would be paid to a standby trust in the event that a policy is terminated without an acceptable substitute, and that the acceptability of such a face amount would be a matter that the NRC would determine when approving an initial policy. Such a determination would depend on the circumstances in each case when the policy is issued, including the amount of funding assurance provided by other combination methods (e.g., money remaining in the licensee's decommissioning trusts after payment of premiums).

18. Primary, Not Excess, Insurance

The draft SRP states that the policy should not contain a clause that makes the coverage "excess insurance" over other coverage, because the timeliness of coverage may be impeded by having to resolve which coverage is primary or excess. This guidance is inappropriate and should be deleted. Insurance policies specify whether coverage is primary or excess specifically to eliminate any need to resolve which coverage applies. As long as the primary and excess coverages are clearly delineated, there should be no NRC concern. Further, specifying whether coverage is primary or excess is necessary in order to determine the premiums for the insurance. Thus, these provisions are commercially necessary.

Moreover, there would be no difficulty in determining when NEIL's decontamination liability, decommissioning liability and excess property insurance ("NEIL Property Policy") applies, and when a proposed decommissioning insurance policy applies. The NEIL Property Policy does not provide any coverage for decommissioning unless the permanent cessation of operations is caused by accidental property damage. In the event that the NEIL Property Policy does apply, it pays for the shortfall in the Trust Fund, i.e., the difference between the amount estimated at policy inception to meet the decommissioning costs and the amount in the Trust Fund when the loss is payable. Once the amounts received under the NEIL Property Policy have been exhausted, payments will start under the proposed decommissioning insurance policy, as additional decommissioning expenses are incurred.

16. Authorized Signatures

The draft SRP calls for signatures to be notarized. Notarized signatures are not customary business practice, and this is an unnecessary administrative burden. It should be sufficient that the policy be signed by an officer or senior manager from each company, each with authority to bind their respective company.

18. Policy Must Conform to Applicable State Laws

The draft SRP calls for an opinion letter that states that the policy conforms to applicable state law. Obtaining opinions of counsel is an unnecessary burden, because the state insurance commissioners assure compliance with state laws. Further, the NRC should recognize that many states do not regulate every form of policy issued nor do states regulate all insurers, insurance transactions or nature of risks. While we believe that an opinion letter would be unnecessary given the level of review a utility will provide any purchase of the proposed decommissioning policy, if required, an opinion letter should state that the policy does not violate applicable state law, rather than stating it conforms to such law.

19. State Public Commission Approval or Non-Objection

The draft SRP states that for electric utility licensees with access to non-bypassable charges, the licensee's state public utility commission must have approved the use of the insurance policy or raised no objection. It is unclear why such an approval is necessary. If the insurance, or the insurance coupled with amounts remaining in decommissioning trusts, satisfies NRC's decommissioning funding requirement, there should be no need for any additional assurances from a State PUC. Moreover, in a deregulated state where a non-bypassable charge may exist, State PUCs may no longer have any authority over the utility's decommissioning trust funds, or the methods that the utility uses to satisfy the NRC's requirements. Typically, a non-bypassable charge will exist where a previously regulated utility has transferred its generating capacity into a deregulated Genco, and has been granted a non-bypassable charge as part of that restructuring. In such circumstances, the Genco will be selling its power in the wholesale market, and thus it may no longer be subject to the PUC's jurisdiction. It would therefore be inappropriate for the NRC to require state PUCs to approve the proposed insurance where they have no jurisdiction to do so. The NRC's proposal would also create a potential timing issue. If a State PUC approval were necessary, the PUC might seek some assurance that the insurance is acceptable to the NRC before granting its approval. If the NRC will not provide this assurance until the PUC acts, the regulatory approvals may be stalemated, and the use of the insurance foreclosed. Accordingly, we strongly recommend that the NRC base its approval solely on whether the insurance meets NRC requirements, and leave any other approvals that may be required to other agencies.

21. Proceeds Payable to a Decommissioning Trust

The draft SRP states that the NRC's decommissioning regulations contemplate that decommissioning payments will be made from the trust, and not by the insurer, so the insurer must timely transfer ample funds to the trust, if not all of the funds covered by the policy at once, on a schedule consistent with access to the funds allowed by § 50.82(a)(8). 69 Fed. Reg. at 43,281. As previously discussed in these comments, the draft SRP should recognize the commercial requirements of an insurer. Insurance covers incurred losses covered by the policy, and it is commercially unreasonable to require or expect an insurer to make a lump sum payment before any costs are actually incurred, and without any determination whether they are within the scope of the coverage. Consequently, the draft SRP should allow a normal claims process, where claims are submitted as losses are incurred, promptly assessed, and then paid by the insurer. The draft SRP also states that "actual payment of claims (*i.e.*, cutting and sending checks) may best be

performed through the trust." *Id.* There is no reason why an insurer would not be able to process claims as promptly as a Trustee. Moreover, the payment process could be expedited if the insurer were permitted to pay claims directly to the licensee or vendors. In order to expedite payments, the NRC should allow such direct payment when approved in advance by the Trustee.

22. Role and Rights of the Insurer

The draft SRP states that the insurer must invest all NRC decommissioning funds transferred from prepaid funds or from an external sinking fund, and all earnings thereon, consistent with the prudent investor standard. While this is generally appropriate, the draft SRP should clarify that the standard of care for investments that should apply is *either* the standard imposed by a PUC or State insurance commissioner, or where no such standard applies, the prudent investor standard. This approach, which avoids unnecessary dual regulation of the fund investments, is the model adopted for the investment standard for NDI's held by non-electric utilities pursuant to 10 C.F.R. § 50.75(h)(1)(i)(B).

This Acceptance Criterion also appears to recognize that an insurer can play a legitimate and useful role in claims management during decommissioning. An insurer will likely have experience with the decommissioning of multiple sites that can assist making decommissioning more efficient and cost-effective. Moreover, because the insurer has a strong economic incentive to assure that decommissioning is conducted cost-effectively, the insurer will play a useful role as an additional watch-dog throughout the plant decommissioning. In the end, this will both help assure that decommissioning projects are completed within the policy limits, and that funds in the insurance company are preserved for payment of claims for other facilities.

23. The Standby Trust Must Be Acceptable to the NRC

In the section of the draft SRP indicating that the standby trust must be acceptable to the NRC, the NRC remarks that qualified funds are not likely to be used because of IRS limitations. This statement should be deleted, because it is unnecessary and may be incorrect. Where decommissioning insurance is purchased using qualified funds, the IRS may require that any proceeds from such insurance must be paid back to the qualified trust. NRC should avoid prejudging IRS's treatment of this issue.

From: "Radigan, Kenneth" <Kenneth.Radigan@AIG.com>
To: "NRCREP@nrc.gov" <NRCREP@nrc.gov>
Date: Mon, Aug 9, 2004 5:07 PM
Subject: NUREG-1577, Rev.1

RDB received
8/10/04
1:15 pm

7/19/04

69FR 43277

①

Template = ADM-013

E-RIDS = ADM-03
Call = M. H. Duszniak/KUS
(MAD1)

Mail Envelope Properties (4117E761.E13 : 21 : 28179)

Subject: NUREG-1577, Rev.1
Creation Date: Mon, Aug 9, 2004 5:06 PM
From: "Radigan, Kenneth" <Kenneth.Radigan@AIG.com>

Created By: Kenneth.Radigan@AIG.com

Recipients

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NRCREP

Post Office
twf2_po.TWFN_DO

Route
nrc.gov

Files	Size	Date & Time
NRC insurance letter 8-09-04.doc		86528
Mime.822	119513	

Options

Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard



AIG Environmental
A Division of American International Company

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kenneth.radigan@aig.com

August 9, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: NUREG-1577, REV.1

Dear Chief:

I would like to make the following comments concerning the draft supplement to the Standard Review Plan which expands NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance".

First, I would like to commend the Nuclear Regulatory Commission for drafting this revision. This revision will enable the licensee to take advantage of insurance industry capacity that is currently available in the market place to underwrite this type of exposure. This revision will help to ensure that sufficient funds will be available to cover the required decommissioning costs of a nuclear power plant. However, there are several aspects of the draft that I feel should be changed which are set forth below. I believe these changes will benefit the licensee and the Nuclear Regulatory Commission.

The first aspect relates to section 13 which requires that the insurance policy which is used to provide decommissioning funding assurance is provided on a primary insurance basis, and not on an excess insurance basis. The pertinent portion of the draft section states that:

"The policy should not contain a clause to the effect that if the licensee has other valid and collectible insurance applicable to decommissioning, then the decommissioning insurance shall be "excess insurance" over such coverage. Because licensee property insurance (e.g., Nuclear Electric Insurance Limited) may cover decommissioning in certain situations, certainty and timeliness of decommissioning coverage may be impeded by having to resolve which insurance is primary or excess."

The licensee is required to purchase property insurance for its nuclear power plant. The property insurance provides insurance for certain costs that may be incurred due to or arising from certain risks pursuant to the terms, conditions and exclusions of such policy. The decommissioning coverage that is contained within the property insurance coverage is very clear as to what decommissioning costs would be paid by the property insurance policy. The financial assurance decommissioning funding insurance policy could also be very clear that it is excess over the decommissioning coverage which may be required under the property policy and it is primary for all other decommissioning costs. It may be much clearer, if the property policy applied, based upon its terms and conditions, that it provides primary coverage to the extent that it provides any coverage and that the financial assurance decommissioning funding policy provides excess insurance to the property policy, to the extent that the property policy applies, and primary coverage to the extent that the property policy does not provide any coverage.

If the primary/excess portion of the regulation remains as stated in the draft and the decommissioning funding policy is forced to be primary to the property insurance policy, it will create a disincentive for new insurance companies to enter this market as such a company would be at a competitive disadvantage against the existing property insurer (e.g., Nuclear Electric Insurance Limited) for the decommissioning funding insurance. The property insurer would already have been paid a premium by the insured to assume the risk of decommissioning costs under certain circumstances as provided by the property insurance. The property insurer would not have a need to charge for this coverage under the decommissioning funding policy because it was already paid to assume this risk under its property policy. However a different insurer who is new to the market that is attempting to underwrite the decommissioning funding insurance would need to charge a premium for all decommissioning costs, even those costs which would otherwise be paid under the property policy, as the decommissioning funding insurance would be "primary" as the draft stands today. The new insurer would not be able to discount the premium for the decommissioning funding policy by the premium which was already paid under the property policy if the decommissioning funding insurance is required to be primary to all other insurance.

In essence this requirement would cause the licensee to pay twice for the same coverage or it would limit the insurers that would be willing to offer this coverage to the existing property insurers, in either event, removing economic incentive and competition. I do not believe that this was the intent of the draft. This problem can be avoided by allowing the decommissioning funding insurance to be excess of the decommissioning costs which are available under the property insurance.

The second section issue that is of concern is the insurance company financial strength requirements contained in Section 4 Issuer Qualifications. (b). This sections states in pertinent part:

"The issuer of the insurance policy has received a financial strength or safety rating of A- or better from A.M. Best, A- or better from Standard & Poor's, A-3 or better from Moody's, A- or better from Fitch, or B- or better from Weiss Rating, as its most recent, Issuer-specific rating."

Realizing the length of time and amount of costs associated with decommissioning a nuclear power plant, it is imperative that the insurer that is providing the decommissioning funding policy have the highest credit rating available in the industry. I believe that the financial standings established in this draft are inadequate when you consider the monetary limits and the length of policy term that is required for the decommissioning funding insurance to fulfill its purpose. It is my opinion that the regulations should require the minimum rating of AA or better.

Additionally, with regard to diversity of risk, I think that the NRC should consider carefully the review of a mutual, captive, or RRG., whether or not such mutual, captive or RRG is insuring one or a number of facilities. The pertinent part of the draft states:

"A mutual, captive, or RRG that can insure more than a single owner's reactors also may be problematic unless the insurer covers a relatively large number of owners and reactors."

The NRC may not be provided with adequate protection if a large number of plants needed to be decommissioned at the same time and a mutual, captive or RRG covers a relatively large number of owners and reactors. A mutual, captive or RRG with a large number of owners and reactors as its sole business could be subject to financial distress if there was some event that would have an impact on the nuclear industry, as there is no diversity in its risk pool to support the downturn for this segment. It is more likely that the NRC would have better protection if the insurer of the decommissioning funding insurance has a diversified portfolio of business.

I have extensive experience in providing funded financial assurance insurance programs for landfill closure and post closure care, oil and gas plug and abandonment, and mine reclamation. All of these programs are designed to provide the required financial assurance that money is available to perform the required cleanup at the end of the operating life of the facility. The financial strength on the insurance provider, the diversity of risk of its business and the spreading of this type of risk among insurance providers should be carefully examined to ensure that the objectives of the financial assurance mechanism is fulfilled.

Thank you for giving me the opportunity to express these comments. Please feel free to call me at (212) 458 2992 if you have any questions.

Ken Radigan
Senior Vice President
AIG Environmental®

RDB/murell
8/16/04
2:05 pm (S)



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

August 13, 2004

4/19/04
69 FR 43247
(2)

Chief, Rules and Directives Branch
Mail Stop TG-D59
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Gentlemen:

**COMMENTS ON DRAFT SUPPLEMENT TO STANDARD REVIEW PLAN
DECOMMISSIONING FUNDING INSURANCE FOR POWER REACTORS (VOLUME
69 FEDERAL REGISTER 43,278, DATED JULY 19, 2004)**

TVA appreciates the opportunity to comment on the draft Supplement to Standard Review Plan (SRP) on Decommissioning Funding Insurance for Power Reactors and the development of this guidance. Insurance is recognized as a proper method of providing decommissioning funding assurance under NRC's regulations. TVA is aware that several companies are developing innovative insurance products to help meet nuclear industry needs while ensuring the certainty of available funds to serve the interests of the public, NRC, and the industry. An appropriate SRP will help prospective insurers understand the full range of NRC's interests in providing this coverage, which will in turn provide additional options for utilities to provide financial assurance for decommissioning. TVA strongly encourages the NRC to recognize new, viable insurance coverage through the issuance of appropriate guidance.

The Nuclear Energy Institute (NEI) has provided detailed comments that were developed in consultation with the sponsors of decommissioning insurance proposals pending before the NRC. NEI's comments address a full range of issues important to developing and implementing a usable decommissioning insurance product in a balanced manner. TVA endorses the comments provided by NEI.

FRIDS = ADM-03

Call = M.A. DUSANISWSKUS (MADI)

Template = ADM-013

U.S. Nuclear Regulatory Commission
Page 2
August 13, 2004

TVA urges the NRC to recognize the important considerations that will allow insurance to become a more viable, worthwhile decommissioning funding mechanism.

If you have any questions, please contact me at (423) 751-2508.

Sincerely,



Mark Burzynski
Manager
Nuclear Licensing

cc: U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20005-0001



Nuclear Electric Insurance Limited

1201 Market Street
Wilmington, DE 19801
U.S.A.

David B. Ripsom
Senior Vice President
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302 888-3000 Tel
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dripsom@nmlneil.com

8/19/04 received

RDB

854 am

(Signature)

7/19/04

69 FR 43277

(5)

August 16, 2004

Chief, Rules and Directive Branch
Mail Stop TG-D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

**RE: COMMENTS ON DRAFT SUPPLEMENT TO STANDARD REVIEW PLAN
DECOMMISSIONING FUNDING INSURANCE FOR POWER REACTORS
(VOLUME 69 FEDERAL REGISTER 43,278, DATED JULY 19, 2004)**

Dear Sir:

Nuclear Electric Insurance Limited (NEIL) is pleased to respond to the request for comments on the draft Supplemental Review Plan (SRP) on Decommissioning Funding Insurance for Power Reactors. We appreciate this opportunity and support the work of the NRC to prepare the SRP. NEIL currently has on file with the Commission an application for the provision of nuclear decommissioning insurance. In preparing that application we have worked closely with the Nuclear Energy Institute and have also collaborated with it on the submission of comments regarding the SRP. NEI's comments will be forthcoming and we support both those comments and the adoption by the NRC of an SRP. We encourage the NRC in its efforts to develop the procedures necessary for it to approve decommission funding insurance as that is extremely important to the industry and the public interest in decommissioning funding assurance.

If you have any questions, please do not hesitate to contact me.

Sincerely,

David B. Ripsom

David B. Ripsom

Cc: U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20005-0001
Mr. Mark Burzynski, TVA

E-KIDS = ADM-03

Call = M. DUSZYNSKI (MAD1)

template = ADM-013

An Exelon Company
AmerGen Energy Company, LLC
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Warrenville, IL 60555

www.exeloncorp.com

Nuclear
Exelon Generation
4300 Winfield Road
Warrenville, IL 60555

*RDB received
8/10/04
8:39 AM*

*7/19/04
69 FR 43277*

(6)

RS-04-122

August 18, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington DC 20555-0001

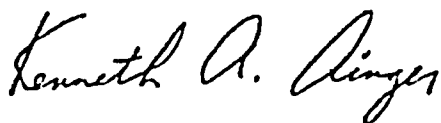
Subject: Comments on Draft Supplement to Standard Review Plan
Decommissioning Funding Insurance for Power Reactors
69 Fed. Reg. 43278 (July 19, 2004)

Reference: Letter from R. Myers (Nuclear Energy Institute) to U. S. NRC, "Comments
on Draft Supplement to Standard Review Plan, Decommissioning
Funding Insurance for Power Reactors," dated August 18, 2004

Exelon Generation Company, LLC (EGC) and AmerGen Energy Company, LLC
(AmerGen) have reviewed the subject Federal Register Notice and welcome the
opportunity to comment on this matter. EGC and AmerGen have reviewed the
comments provided by the Nuclear Energy Institute in the referenced letter and endorse
the comments provided in that letter.

If you have any questions regarding this matter, please contact me at (630) 657-2800.

Respectfully,



Kenneth A. Ainger
Manager, Licensing

FRIDS = ADM-03

*Call = M. DUSZNIWSKYJ
(MFDI)*

Template = ADM-013



PO Box 1551
411 Fayetteville Street Mall
Raleigh NC 27602

*RDB received
8/17/04
2:35 PM*

*7/19/04
69 FR 43277*

(2)

Serial: PE&RAS 04-096
August 17, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: Comments on Draft Supplement to "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NUREG-1577, Rev. 1 (69 FR 43278)

Ladies and Gentlemen:

Progress Energy, Inc. (PGI) supports the development of criteria by which the NRC would evaluate the use of an insurance policy to provide decommissioning funding assurance under 10 CFR 50.75. However, the discussion of Issuer Qualifications in Section II.4 of the draft Supplement to the Standard Review Plan, NUREG-1577, Revision 1, raises two concerns:

- 1) The requirement that the insurer be licensed by the authorities of the State where the relevant nuclear plant is located to transact the business of insurance would seem impractical when extended to cover all states with nuclear power plants.
- 2) The discussion of "captive" or "mutual" insurer could be interpreted to prevent some otherwise qualified large insurers that are organized mutuals from developing a program.

Please contact me at (919) 546-4579 if you have any questions.

Sincerely,

Signature for T. Groblewski

Tony Groblewski
Supervisor - Regulatory Affairs

HAS

E-RFDS=ADM-03

add = M. DUSANIWSKI (MADI)

template=ADM-013

From: <jmatthews@morganlewis.com>
To: <NRCREP@nrc.gov>
Date: Wed, Aug 18, 2004 3:03 PM
Subject: Comments re Draft Supplement to NUREG-1577, Rev.1

*RDB received
8/19/04
12:40 PM @*

Please accept the attached comments, submitted on behalf of NDAC, Inc.

(See attached file: NDAC Letter Joining NEI Comments on Draft SRP Supp (08-18-2004).pdf)

*7/19/04
69 FR 43277
(4)*

Regards,

John

John E. Matthews
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: 202.739.5524
Main: 202.739.3000
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CC: <cag@nrc.gov>

E-KIDS = ASH-03

*Call = M. Dusanivskyj
(MADT)*

Template = ASH-013

Mail Envelope Properties (4123A80F.ED4 : 11 : 65236)

Subject: Comments re Draft Supplement to NUREG-1577, Rev.1
Creation Date: Wed, Aug 18, 2004 3:02 PM
From: <jmatthews@morganlewis.com>

Created By: jmatthews@morganlewis.com

Recipients

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 CAG CC (Carol Gallagher)

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NDAC Letter Joining NEI Comments on Draft SRP Supp (08-18-2004).pdf	73462	
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Options

Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

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Security: Standard

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August 18, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: **Comments on Draft Supplement to Standard Review Plan
Decommissioning Funding Insurance for Power Reactors
69 Fed. Reg. 43,278 (July 19, 2004), NUREG-1577, Rev. 1**

Dear Sir:

The following is submitted on behalf of NDAC, Inc. (NDAC). The organizers of NDAC submitted a request for NRC review and approval of a decommissioning liability insurance program by letter dated January 29, 2004. This request was supplemented by letter dated May 7, 1994, which also identified NDAC as the proposed insurance company. NRC accepted this material for review as a topical report by letter dated June 14, 2004.

NDAC supports NRC's effort to develop generic guidance for reviewing decommissioning insurance and urges that NRC adopt appropriate guidance taking into account the need to balance NRC, tax, insurance, state public utility commission, state insurance commissioner and commercial needs. NDAC therefore is encouraged by NRC's first step in publishing the Draft Supplement to the Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance, NUREG-1577, Rev. 1 (Draft SRP Supplement). However, the draft as published presents a number of significant problems, which have been identified in the comments prepared by the Nuclear Energy Institute (NEI) and submitted on behalf of the nuclear industry.

In an effort to facilitate the NRC's review of comments on the Draft SRP Supplement, NDAC coordinated with NEI and others in developing the consolidated comments submitted by NEI.

August 18, 2004
Page 2

NDAC supports those comments and urges that NRC incorporate the changes to the Draft SRP Supplement requested in those comments.

Respectfully submitted,



John E. Matthews
Counsel for NDAC, Inc.



Jennifer M. Granholm
GOVERNOR

STATE OF MICHIGAN
PUBLIC SERVICE COMMISSION
DEPARTMENT OF LABOR & ECONOMIC GROWTH
DAVID C. HOLLISTER
DIRECTOR

J. Peter Lark
CHAIR
Robert B. Nelson
COMMISSIONER
Laura Chappelle
COMMISSIONER

October 18, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Comments on NUREG-1577, Rev.1, Draft Supplement to Standard Review
Plan Decommissioning funding Insurance for Power Reactors
69 Fed. Reg. 43.278 (July 19, 2004)

Dear Sir:

The Michigan Public Service Commission (MPSC) appreciates the opportunity to comment on the draft Supplement to Standard Review Plan (SRP)-NUREG 1577, on Decommissioning Funding Insurance for Power Reactors. The use of insurance for decommissioning funding is permitted under NRC's regulations and it has been considered several times over the years, but has not been used in the past because of concerns over the reasonable assurance that decommissioning funds would be available when required. The MPSC is aware of recent development of a new insurance product, which may be of future assistance to the nuclear industry for decommissioning funding requirements.

The MPSC believes that before the NRC takes up its time in providing guidance on the use of insurance mechanisms to fund decommissioning that a decision from the IRS on how the insurance programs will be treated for tax purposes is critical. Without a favorable tax ruling from the IRS the MPSC does not believe that the use of insurance products to fund decommissioning will be beneficial to the utility companies. If a favorable tax ruling is granted by the IRS then the MPSC recommends that the NRC carefully consider the development of proposed insurance mechanisms.

The recent decommissioning funding insurance proposals, which have been submitted by insurers and other parties to the NRC as a potential source of decommissioning funding requirements, demands that the NRC carefully consider the issuance of guidelines for the use of insurance as a mechanism for decommissioning funding of all nuclear plants. However, it appears to the MPSC that the recent interest of insurance products to fund decommissioning is more germane to nuclear plants that are operating in states where deregulation of generation has occurred. States that continue to regulate generation may be best served by the continued

funding in qualified and non-qualified trust funds by customers benefiting from the service provided by the regulated utility owner.

The MPSC will provide comments on two areas of concern presented in the SRP guidance criteria, which correspond to the numbers and headings used in the SRP-NUREG-1577. The MPSC has not evaluated current insurance proposals sufficiently to make an evaluation of such products.

4. Issuer Qualifications

The SRP states that the insurer must be "licensed" by authorities of the State where the relevant nuclear plant is located to transact the business of insurance. The MPSC recommends that it become mandatory that an insurer has its principal place of business in the United States and that it is incorporated in the United States. The MPSC believes that the preferred method is to have each insurer licensed in the State where the nuclear plant is located. The State of Michigan does require an insurer to be licensed in Michigan, before it can provide an insurance product (MCL 500.424). If insurers are not required to be licensed in each State it is most likely that insurers will seek out the most favorable State to be licensed in. Someone has to take responsibility of the licensing for the insurer. If the insurer is required to be licensed in only one State there would have to be some federal statutory exemption that would preempt conflicting State laws in States that do require licensing. The NRC may become the agency that would have to take responsibility that the insurance is offered, issued and delivered properly. The MPSC does not think that it is duplicative regulation to subject each insurer to licensing requirement in the State where the nuclear plant is located. In fact it is prudent that every State jurisdiction would want to license an insurer of a product where adequate protection of public health and safety is involved and the dollars have come from the customers under that States regulatory jurisdiction.

The NRC has requested comments on the proposed guidance with respect to a risk retention group (RRG) or mutual insurer being acceptable. One of the proposed requirements is in regard to the financial ratings of the insurer. Most of us are familiar with the credit ratings of our regulated utilities and the agencies of Standard and Poor's, Moody's and Fitch's that provide such rating. The financial credit ratings, which are provided by these agencies, provide comfort in the financial strength or health of that utility. The licensing of an insurer by each State may address some concerns about the solvency of an insurer, but does not alone demonstrate the financial strength or safety rating. A new decommissioning funding insurer should be required to provide a satisfactory rating by a rating agency before it is allowed to begin offering insurance. No State desires to risk critical decommissioning funds to an insurer that may not be able to meet future obligations. There should be some financial standards established, in addition to just a license requirement.

19. State Public Service Commission Approval or Non-objection

A State Commission approval or non-objection for the use of an insurance policy is appropriate in accordance with current and future nuclear decommissioning funding policy. The State Public Service Commissions should not be shut out of the process, which involves adequate protection of public health and safety under its jurisdiction, an area that states are well positioned to provide. State PUC review of the insurance policy is appropriate for the protection of ratepayers subject to its jurisdiction. In the certification pursuant to Section 33(a) (2) of the Public Utility Holding Company Act of 1935 certification by the State PUC was mandatory to qualify for the exemption. The State PUC has to certify that it had authority and resources to protect utility ratepayers and that it intended to exercise that authority. The MPSC has authority over the decommissioning trusts of the nuclear plants under its jurisdiction since they were started and it intends to maintain that authority for the purpose of issuing a potential new decommissioning product. The State PUC's have a commitment to their utility customers and they should not be foreclosed from a process that would affect them.

In summary, if the IRS provides a favorable tax ruling for the use of insurance policies and the NRC sees merit in allowing an insurance mechanism to be used for the funding of nuclear decommissioning the MPSC urges the NRC to continue allowing each State PUC to make the final decision on whether it will allow its utilities to fund nuclear decommissioning with an insurance policy.

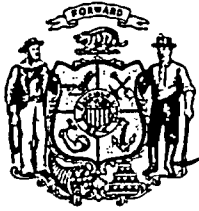
We hope the MPSC comments are timely and thank-you for the opportunity to comment and your consideration.

Sincerely,

J. Peter Lark, Chair

Robert B. Nelson, Commissioner

Laura Chappelle, Commissioner



Public Service Commission of Wisconsin

Burneatta Bridge, Chairperson
Robert M. Garvin, Commissioner
Mark Meyer, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

October 12, 2004

Chief, Rules and Directives Branch
Mail Stop TG-D59
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Comments on NUREG-1577, Rev. 1, Draft Supplement to Standard Review Plan,
Decommissioning Funding Insurance for Power Reactors
69 Fed. Reg. 43,278 (July 19, 2004)

Dear Sir or Madam:

The Public Service Commission of Wisconsin is pleased to respond to your request for comments on the draft Supplement to Standard Review Plan you have prepared, which proposes criteria for evaluating the use of insurance policies to provide decommissioning funding assurance under 10 CFR 50.75.

Under 10 CFR 50.75(a), funding for the decommissioning of electric power reactors is subject to dual regulation by both the federal and state governments. The state of Wisconsin has vigorously exercised this responsibility for over 30 years, regulating decommissioning in order to protect ratepayers since the earliest days of nuclear power in Wisconsin, and well before the federal government asserted its decommissioning authority. Wisconsin has also taken a very conservative approach to decommissioning, to ensure that these costs are fully funded. For example, in 1985 the Public Service Commission (Commission) ordered the owners of Kewaunee Nuclear Power Plant and Point Beach Nuclear Plant to change their accounting methods and use external sinking trusts as their sole means of accruing decommissioning funds. The Commission established both qualified and nonqualified trusts, specifying that no funds could be released from these trusts without its prior approval. Since that date, the Commission has maintained ongoing supervision over the amounts collected from ratepayers and over permissible fund investments.

The current operating license of Kewaunee will expire in 2013, while those of the two units at Point Beach expire in 2010 and 2013. Because of the Commission's active and conservative regulation, funding levels for each of these plants are already sufficient to pay the site-specific costs of full decommissioning to greenfield status.

The Commission is vitally interested in continuing this state regulation of decommissioning funding. Wisconsin needs the ability to decide for itself whether insurance is an acceptable alternative to external sinking funds. The Commission recommends that the NRC do nothing that might compromise the ability of states to protect their citizens from the costs of

Chief, Rules and Directives Branch
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decommissioning. It is essential that the Commission retain authority to determine what forms of financial assurance meet Wisconsin's circumstances and will work best for Wisconsin.

The Commission is also concerned that insurance not become a means of diluting the real financial assurance of nuclear plants nationwide. Establishing the financial solvency of private insurers is not one of the NRC's principal areas of strength. These third-party guarantors of financial assurance, which have no direct or indirect recourse to the ratepayers who receive electricity from a plant, may be more likely to fail if the plant's decommissioning costs are unexpectedly high. The bankruptcy of an insurer raises the possibility that taxpayers throughout the country will be tapped to pay unrecovered costs of decommissioning some plant. This would be a liability of taxpayers residing in every state. This could be a particular problem for single-owner insurance pools, because state Insurance Commissioners may view these as a form of self-insurance whose risks fall entirely upon the owner.

To protect the citizens of Wisconsin, insurance should not be allowed for any U.S. plant unless it is as real a form of financial assurance as every other allowable type of decommissioning funding.

Thank you for considering these comments.

Sincerely,

Lynda L. Dorr
Secretary to the Commission

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cc: Robert Norcross
David Ludwig

**PROPOSED STAFF RESOLUTION OF COMMENTS
ON DRAFT SUPPLEMENT TO STANDARD REVIEW PLAN**

(NEI Comments)

1. The Standard Review Plan (SRP) should use language that reflects that insurance as a decommissioning funding assurance mechanism must provide reasonable assurance that funds will be available as needed, not absolute certainty. Also, the word “guarantee” should be avoided.

Response: The NRC’s decommissioning funding assurance regulation at 10 CFR 50.75 uses the term “other guarantee method” when discussing the alternative methods of providing financial assurance available to licensees. To the extent appropriate, the SRP will be modified to use language to reflect that financial assurance methods, including insurance, must meet a reasonable assurance standard rather than an absolute certainty standard.

2. The SRP should recognize that insurance may be used in combination with other decommissioning funding assurance mechanisms.

Response: The SRP will be modified to reflect that insurance may be used in combination with other approved funding assurance mechanisms.

3. The SRP should recognize that a licensee’s decommissioning funding obligation could be based upon a site-specific cost estimate that is less than the formula amount, for example, derived through an approved exemption or, if at the end of plant life, a Post Shutdown Decommissioning Activities Report, License Termination Plan, or Decommissioning Plan.

Response: NRC regulations at 10 CFR 50.75(b)(1) require that decommissioning funding assurance be provided in an amount which may be more but not less than the NRC formula amount. See also NUREG-1577, Rev. 1. An exemption to allow funding assurance in an amount less than the formula would be at best, extremely rare. In addition, the NRC does not believe that the SRP, which focuses primarily on operating reactor situations, needs to explicitly recognize hypothetical post-shutdown scenarios, which are very case-specific and are addressed by the NRC on a case by case basis. Therefore, in consideration of the above, the NRC is not making any modifications to the SRP in response to this comment.

4. The NRC should not impose constraints on provisions allowing increases in coverage, or allowing reductions in the policy limits under a predetermined methodology.

Response: The SRP does not impose constraints on provisions allowing increases in coverage or allowing reductions in policy limits under a predetermined methodology as long as the policy provides the required minimum amount of coverage, which can be identified and calculated at any time. For purposes of the biennial decommissioning funding reports, a minimum current policy value statement by the insurance company will be needed from the licensee.

5. The NRC should not require that an insurance policy establish sublimits specifying what amounts are covered for radiological versus nonradiological cleanup. As an alternative, the NRC could require that radiological costs have priority.

Response: The NRC must be able to readily determine how much financial assurance is being provided for radiological decommissioning in order to determine if additional funding assurance is necessary. Radiological decommissioning amounts have always been required to be specifically identifiable in decommissioning trusts separate from non-radiological amounts. Even if an insurance policy were to indicate that radiological costs have priority, there could be potential conflicts between competing interested parties during the decommissioning process that could introduce uncertainty and litigation as to what amount of funds remain to complete radiological decommissioning. The NRC believes that sublimits should be clearly identified in an insurance policy, analogous to subaccounts or dedicated amounts being required to be identified in decommissioning trusts.

6. The NRC should not require that an insurance policy be automatically adjustable as decommissioning cost estimates rise.

Response: The NRC does not intend to require that an insurance policy be automatically adjustable as decommissioning cost estimates rise. Should the estimates rise, the licensee is responsible for providing additional financial assurance, whether through additional insurance or through another mechanism.

7. The SRP should not refer to deductibles as a “euphemism.”

Response: The term will not be used in the SRP.

8. Coverage of costs incurred after a plant shuts down beyond NRC defined decommissioning costs should not be precluded.

Response: In general, the NRC does not object to an insurance policy covering costs beyond NRC-defined decommissioning costs after shutdown, provided that specific sublimits are identified, and provided further that radiological decommissioning funds are not used to purchase insurance coverage that can be used for non-radiological decommissioning purposes, and that issues or controversies related to non-radiological coverage(s) have no effect on the policy’s coverage of NRC-defined decommissioning.

9. Costs that must be paid under the insurance policy should be only those that have been actually incurred. Amounts above costs actually incurred should not be required to be placed in a standby trust.

Response: The NRC disagrees. Under the regulation at 10 CFR 50.75(e)(1)(iii)(A)(1), if the insurer intends to cancel or not renew the insurance policy, the full face amount of the insurance policy must be paid to the beneficiary automatically prior to the expiration if the licensee fails to provide a replacement within 30 days after receipt of notification of cancellation or non-renewal. Outside of this situation, the insurer must timely transfer funds to the trust on a schedule required by the trustee consistent with access to funds allowed by 10 CFR 50.82(a)(8). The schedule required by the trustee may anticipate funding needs and need not demonstrate which costs have been incurred.

10. Legal fees and expenses, other than those incurred to obtain NRC approvals of a license termination plan, should not be recoverable under an insurance policy unless they are pre-approved by the insurer.

Response: The NRC disagrees. Legal fees and expenses when disputes arise in the contracting business are routinely considered part of overall costs for the project, in this case, decommissioning a reactor.

11. The SRP should clarify the use of the term “domiciled.”

Response: A corporation’s domicile is normally where its principal place of business is located. The SRP will be modified to more clearly indicate whether the SRP is referring to where the insurer’s principal place of business is, where the insurer is incorporated, and/or where the insurer is licensed.

12. The SRP should not provide that the insurer must be licensed in the State where the relevant plant is located.

Response: The NRC is aware that in general, insurance companies are not necessarily required to be licensed by each state where the company does business or insures property. The NRC is also aware that Federal law allows Risk Retention Groups (RRGs) to be licensed in a single state but do business elsewhere. However, decommissioning a nuclear reactor is not a typical line of insurance. The health and safety interests of the state where the reactor is located are undoubtedly very distinct from the interests of the state where an insurance company may be incorporated or have its principal place of business. Accordingly, the NRC believes that the state insurance commission where the relevant reactor is located must be given an opportunity to allow or disallow the insurance product to be used in that State. The NRC recognizes that a particular state's insurance commission may not want to actually license the insurance company. Therefore, the SRP will be modified such that written approval, non-objection, or licensing by the State where the reactor is located must be obtained.

13. The SRP should not state that a captive insurer that covers only a single owner's reactors will be problematic.

Response: The SRP states that a captive insurer that covers only a single owner's reactors is problematic due to the inherent risks of this form of self-insurance. Also, NMSS policy and guidance on this subject adheres to this position and there is no reason that the SRP should not be consistent with the NMSS policy and guidance. Accordingly, the SRP will not be modified in response to this comment.

14. Clarification is needed for the SRP's statement that a mutual, captive, or RRG that can insure more than a single owner's reactors may be problematic.

Response: Even though a mutual, captive, or risk retention group may insure more than a single owners' reactors, such an insurer still may not provide reasonable assurance of decommissioning funding due to insufficient capitalization, risk transfer, and risk distribution, among other factors. The SRP includes specific eligibility criteria for such insurers in light of the fact that these insurers still may not provide reasonable assurance. The SRP will be clarified to state that there are factors whereby the subject category of insurers still may not provide reasonable assurance of decommissioning funding.

15. The criterion that a group captive, RRG, or mutual insurer should have a favorable IRS ruling is inappropriate.

Response: The NRC believes that an IRS ruling is important evidence demonstrating that there is an actual transfer of risk warranting a determination that the applicant for the ruling is in fact an insurance company. The NRC is not concerned with the financial aspects of whether the insurance company receives a tax deduction.

16. Ratings from rating organizations such as A.M. Best should not be a criterion in the SRP.

Response: The NRC continues to believe that a rating should be obtained with respect to certain entities described in the SRP. However, the NRC recognizes that a rating may not be available immediately in cases where an insurance company is new. Therefore, the SRP will reflect that an insurance company will be expected to request a rating where a rating has not yet been assigned.

17. The SRP should clarify that certain notice and payment requirements for cancellation or termination would be inapplicable to policies that cannot be canceled.

Response: The NRC agrees that the SRP should say certain notice and payment requirements for cancellation would be inapplicable to policies that cannot be canceled. However, termination and cancellation may mean different things in some States. Therefore, such requirements may still apply to policies that cannot be canceled. The SRP will be modified to reflect the above.

The NRC is also modifying Section 9 of the SRP to delete references to “misrepresentation/fraud.” The NRC has reconsidered whether misrepresentation or fraud should be noted as a basis for an insurer to cancel or terminate a policy. In this specific context of decommissioning funding assurance, the NRC has concluded that an insurer, prior to issuing a policy, should be able to uncover fraud or misrepresentations of a nature that would result in the insurer deciding not to issue the policy.

18. The SRP should recognize that the insurance policy may specify several face amounts that apply in different situations, including when a policy is terminated because of non-payment of premiums, material breach, or fraud. The SRP should clarify that it is the applicable face amount that would be paid to a standby trust in the event that a policy is terminated without an acceptable substitute, and that the acceptability of such a face amount would be a matter that the NRC would determine when approving an initial policy.

Response: If policies are submitted that contain more than a single pay-out amount (e.g., based on contingencies), the NRC will take only the lowest amount into account when assessing whether a sufficient amount of coverage has been offered, whether in combination with one or more other approved decommissioning funding methods or as the sole assurance method. Thus, the SRP will be modified to clarify that only the smallest amount will be used when determining compliance with the regulatory minimum amount. For pay-out amounts that are not expressed as absolute numbers but must be calculated using one or more variables whose values are not known or provided to the NRC, the NRC will calculate those pay-out amounts conservatively, using values for the variables that yield the lowest amounts. Also, fraud or misrepresentation (the insurance company should provide itself with an adequate opportunity to uncover any such fraud or misrepresentation before it issues the policy) or anticipated future shortfalls of

decommissioning funds cannot be an acceptable basis for proposing a reduced pay-out amount. The SRP will reflect the foregoing.

19. The SRP should not preclude a policy from designating whether coverage is primary or excess.

Response: The SRP will be modified so as to not preclude an insurance policy for radiological coverage from designating whether that coverage is primary or excess; however, the SRP will be modified such that should there be a dispute regarding which insurance policy is primary, the insurance policy first issued shall be treated as primary. The SRP with respect to any other types of coverage (e.g., non-radiological) included in the decommissioning policy will reflect that such coverage should be primary. The reason is that the primary versus excess issue only relates to radiological coverage by reason of the existing NEIL property coverage that also covers radiological cleanup in the event of an accident leading to decommissioning. Also, disputes as to whether non-radiological coverage is primary or excess and associated delays will be avoided.

20. The SRP should not require that signatures be notarized.

Response: The NRC continues to believe that notarized signatures provide additional assurance of the identity of the parties. Moreover, the additional burden of notarization is minimal. Thus, the SRP will not be modified in this regard.

21. Legal opinion letters should state that the insurance policy does not violate applicable State law, rather than stating it conforms to State Law.

Response: The NRC sees no material difference between the two alternatives. Therefore, it does not object to making the requested change.

22. Approvals or non-objections by State public utility commissions in the case of electric utilities with access to nonbypassable charges should not be required before or as part of the NRC approval process regarding an insurance policy.

Response: The draft SRP inadvertently addressed "electric utility licensees with access to nonbypassable charges" when it should have addressed electric utility licensees and non-electric utility licensees with access to nonbypassable charges. In any event, with respect to electric utility licensees, the NRC believes that State public utility commission approval or non-objection should be explicitly included in the SRP as an integral step in the NRC's approval process because State PUCs maintain continuing oversight of ratepayer financed decommissioning trust funds, and the NRC's decommissioning funding assurance regulatory scheme has long recognized this role of the States. PUC approval or non-objection will help avoid conflicts in the regulatory approval process. To avoid unnecessary delays in the NRC approval process when a State PUC has not yet acted, the SRP will be modified slightly to reflect that State PUC approval or non-objection will be either a condition precedent or a condition subsequent to the NRC's approval. For non-electric utilities with access to nonbypassable charges, State

legislation varies and the NRC recognizes that PUCs, therefore, may or may not have a role in overseeing decommissioning trust funds. However, the NRC believes that the “approve or raise no objection” language of the draft SRP adequately covers situations where the State may or may not have a role in overseeing decommissioning trust funds when such funds are proposed to be used to obtain decommissioning insurance policies.

23. The SRP should allow for a claims management process under which claims are submitted as losses or costs are incurred, the claims are assessed by the insurer, and then paid by the insurer. The SRP should reflect that decommissioning payments can be made directly by the insurer instead of the trustee when approved in advance by the trustee.

Response: The NRC has reconsidered the potential ramifications of a comprehensive claims management scenario involving substantive review and approval by the insurer of activities, vendor selections, and payments. The NRC believes that claims management of this nature is problematic. Any claims management process of a substantive nature that could result in claims being denied or delayed by the insurer has the potential to disrupt and interfere with carrying out an approved decommissioning plan, and thereby undermine the regulatory requirement that reasonable assurance of decommissioning funding is being provided. Other approved decommissioning funding methods do not involve any additional claims management layer. Furthermore, the NRC conducts inspections and provides substantial oversight to ensure that decommissioning activities are performed in accordance with NRC-approved plans. In addition, since they are ultimately responsible for the completion of decommissioning their facilities by law, licensees have always had every incentive to use assured sources of funding in the most cost effective manner possible consistent with protecting public health and safety. Accordingly, the SRP will be revised so that claims management features in an insurance policy will not be acceptable.

24. Instead of stating that decommissioning trust funds transferred to an insurance company must be invested by the insurer under a prudent investor standard, the SRP should recognize that there may be State PUC or insurance commission investment standards and thus clarify that the investment standard should be either the applicable State standard or where no such standard applies, the prudent investor standard.

Response: The NRC agrees with this comment and will change the SRP accordingly.

25. The SRP should not remark that qualified decommissioning trusts are not likely to be used as standby trusts because of IRS limitations.

Response: The NRC will modify the SRP to remove the remark.

(AIG Comments)

26. The SRP should reflect that the insurance policy may be “excess” insurance if the licensee has other valid and collectible insurance applicable to decommissioning.

Response: See the response to comment #19 above.

27. The insurer should have a rating of at least AA by a rating organization.

Response: Licensees are free to select insurers with higher ratings than the benchmarks required by the SRP, but the NRC believes that the SRP rating levels are appropriate in the overall context. Therefore, no changes will be made to the SRP.

28. A mutual, captive, or RRG would be less risky if the insurer had a diversified portfolio of business, rather than business consisting only of nuclear reactors.

Response: NRC expects that such factors would be considered by the IRS, licensing authorities, and rating agencies and does not intend to conduct its own analysis of insurer risk. No changes to the SRP will be made in this regard.

(Michigan Public Service Commission Comments)

29. A ruling by the Internal Revenue Service concerning whether the insurer will be treated as an insurance company for tax purposes is critical.

Response: The SRP in essence provides that an IRS ruling must be obtained with respect to a group captive, RRG, or mutual insurer, which are the cases where there is an issue as to whether the insurer would be deemed an insurance company for tax purposes. Therefore, no changes to the SRP were made in response to this comment.

30. States that continue to regulate utilities may best be served by the continued use of trust funds for decommissioning.

Response: The SRP does not dictate which type of decommissioning funding assurance mechanism a licensee must use. No changes to the SRP were made in response to this comment.

31. An insurer should be incorporated and have its principal place of business in the United States. It is preferable that the insurer be licensed in the state where the relevant plant is located.

Response: The SRP does not preclude an insurer from being domiciled or incorporated outside the U.S. in light of the other qualifications that an insurer must have, and in light of service of process and being subject to lawsuits not normally being problematic. The SRP provides that an insurer should be licensed by the state where the plant is located, or, after notice to the state, approved by the state authorities or not objected to. (See also comment 12 and the response thereto.) Thus, no additional changes were made to the SRP.

32. A new insurer should be able to provide a satisfactory rating by a rating agency.

Response: See the response to comment 16.

33. State public utility commission approval of or non-objection to the use of an insurance policy is appropriate. The NRC should allow states to decide whether to allow licensees in those states to use an insurance policy for decommissioning funding assurance purposes.

Response: The SRP provides for state public utility commission approval or non-objection in the case of regulated electric utilities or licensees who have regulated nonbypassable charges. The SRP does not preempt existing state jurisdiction over its utilities with respect to whether the state may disallow the use of a certain decommissioning funding assurance method such as insurance. Therefore, no changes were made to the SRP.

(Public Service Commission of Wisconsin Comments)

34. The NRC should not do anything to infringe upon the ability of a state to determine what forms of financial assurance will work best for the state.

Response: See response to comment 33.

35. The bankruptcy of an insurer raises the possibility of a taxpayer burden to pay for decommissioning. Insurance should not be allowed unless it is a form of financial assurance as “real” as other methods of financial assurance.

Response: The SRP has been designed such that the NRC will not approve any insurance policy unless it provides reasonable assurance of decommissioning funding within the scope of 10 CFR 50.75.