

November 2, 2001

Ms. Gary L. Jones, Director  
Natural Resources and Environment  
United States General Accounting Office  
Washington, D.C. 20548

Dear Ms. Jones:

I am responding to your October 1, 2001 request that the U.S. Nuclear Regulatory Commission (NRC) provide comments on the draft General Accounting Office (GAO) report to the Honorable Edward J. Markey, House of Representatives, entitled "Nuclear Regulation - NRC's Assurances of Decommissioning Funding During Utility Restructuring Could be Improved."

The NRC provided the GAO with comments on the statement of facts associated with this report during an exit meeting with GAO staff on September 7, 2001. We are pleased that GAO incorporated many of the NRC's comments from the exit meeting in the October 1, 2001, draft report. GAO determined that most restructuring license transfers have maintained or enhanced assurance of decommissioning funding, and GAO also has provided constructive comments regarding documentation of the financial considerations associated with power reactor license transfer requests.

However, we continue to be concerned that GAO has not fully represented certain aspects of the NRC's license transfer review process, nor entirely considered the various processes associated with the decommissioning of a power reactor facility. The enclosed comments are intended to provide a more comprehensive perspective related to the conclusions and recommendations contained in GAO's draft report.

Sincerely,

***/RA by William F. Kane Acting For/***

William D. Travers  
Executive Director for Operations

Enclosures: As stated

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NRC COMMENTS ON DRAFT GENERAL ACCOUNTING OFFICE (GAO) REPORT TO THE  
HONORABLE EDWARD J. MARKEY, HOUSE OF REPRESENTATIVES, "NUCLEAR  
REGULATION - NRC'S ASSURANCES OF DECOMMISSIONING FUNDING DURING UTILITY  
RESTRUCTURING COULD BE IMPROVED"

1. GAO begins Chapter 2 of the draft report by stating (p. 20) that "for most of the requests that NRC reviewed to transfer licenses for one or more plants, the level of assurance that the plants' decommissioning funds will be adequate has been maintained or enhanced." However, GAO then cites two specific license transfer reviews that caused it concern, and GAO concludes Chapter 2 by stating (p. 33) that "NRC's inconsistent review and documentation of license transfer requests creates the appearance of different requirements for different owners or different types of transfers." Based on this conclusion, GAO recommends that NRC revise its standard review plan (NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," hereinafter referred to as the SRP) and related controls for reviewing license transfers to include a checklist for NRC staff to follow.

NRC conducted two separate detailed financial reviews. The cited reviews concerned the corporate reorganization of Public Service Electric and Gas Company (PSEG) and the formation of Exelon Corporation (Exelon) through a merger between Unicom and PECO Energy Company.

NRC believes that the actual decommissioning fund assurance (DFA) reviews associated with the PSEG and Exelon license transfers were adequate and that reasonable assurance of decommissioning funding was ascertained. In accordance

with the SRP, NRC staff verified that adequate decommissioning funding would be maintained by reviewing other sources of financial information in addition to the application materials, including publicly available information concerning the appropriate State's non-bypassable charge requirements. In the PSEG review, NRC specifically documented a detailed and thorough evaluation of applicable State law pertaining to DFA, which, in conjunction with NRC license conditions required by the PSEG order, provides reasonable assurance of decommissioning funding for PSEG's plants. NRC staff also followed the SRP guidance regarding adequate review of applicable State legislation pertaining to DFA in the Exelon review to ensure conformance with applicable NRC regulations and to obtain reasonable assurance of decommissioning funding. NRC, however, agrees with GAO that the DFA aspect of the Exelon review was not appropriately documented.

With respect to financial qualifications reviews, GAO concludes (p. 30-31) that NRC's review of Exelon's financial qualifications for operating a large fleet of nuclear reactors was not complete and not conducted in accordance with the SRP guidance. Again, the NRC believes that this conclusion is a reflection of a lack of documentation, rather than any substantive deficiency in the actual review. NRC staff followed the SRP guidance by evaluating the appropriate information needed to obtain reasonable assurance of Exelon's financial qualifications to own and operate its reactors safely. NRC acknowledges, however, that some of the factors associated with the Exelon review were not appropriately documented, such as the NRC staff's finding that certain changes in financial projections would not have had a material effect on NRC's determination of Exelon's financial qualifications.

Regarding GAO's recommendation for developing a license transfer review checklist (p. 33), NRC does not believe that a checklist will greatly enhance the effectiveness of license transfer reviews because many of the reviews that have been performed over the last few years have been very complex and, in many aspects, unique. GAO's assessments of the PSEG and Exelon reviews appear to be based largely on the lack of adequate documentation supporting the decision-making logic provided in the SRP. Therefore, NRC believes that appropriate documentation of the logic supporting each license transfer review will help to further demonstrate the adequacy and effectiveness of each review. The NRC will seek to ensure proper documentation is maintained to address GAO's concern of the appearance of different requirements.

2. In Chapter 3 of the draft report, GAO concludes (p. 50) that the proposed alternative approaches for decommissioning (i.e., entombment and rubblization) raise equally important policy and technical issues. GAO also recommends (p. 50) that NRC require site radiation surveys to be performed immediately after a licensee announces its intention to permanently cease operations to minimize the chances of the discovery of contamination problems late in the decommissioning process.

NRC agrees that the issues raised in the draft report are important. Although NRC has previously identified DECON and SAFSTOR as the preferred alternatives, NRC is evaluating whether ENTOMB, under certain circumstances, may be an allowable alternative. NRC intends, during the ongoing entombment rulemaking effort documented in SECY-01-0099, to consider GAO's recommendation and obtain stakeholder input for addressing the technical and policy concerns associated with the

entombment alternative approach. Regarding rubblization, NRC considers the rubblization process to be subject to the license termination rules of 10 CFR Parts 20, and 50, instead of the low-level waste requirements of 10 CFR Part 61 because the intent is not to create a low-level waste disposal site.

NRC believes that GAO's site survey recommendation would not add significant value to current decommissioning practices. Under current regulations, a licensee may begin substantial decommissioning activities, such as removing and dismantling various facility systems and structures, prior to site characterization. An immediate site characterization survey performed prior to these decommissioning activities, as recommended by GAO, would not necessarily identify all potential areas of radioactive contamination because there may be sources of radioactivity that cannot be identified or adequately assessed until many of the facility systems and structures are dismantled and removed. Therefore, GAO's recommendation may not necessarily be cost effective, because additional site characterization surveys may need to be performed in order to thoroughly understand the contamination remaining after the removal and dismantlement of facility systems and structures.

3. In Chapter 4, GAO (p. 53-54) states that the new accounting standard set forth in June 2001 by the Financial Accounting Standards Board (FASB) will improve the consistency of reporting estimated decommissioning costs in financial statements, but will not ensure that licensees will have adequate funds for decommissioning. The NRC neither supports nor opposes the new FASB standard. The NRC notes that, at one point, it intended to adopt the FASB standard for reporting decommissioning costs as a way to

obtain additional information on the status of decommissioning funds, but that the FASB standard was delayed for several years. In September 1999, the NRC promulgated additional reporting requirements for the status of decommissioning funding, obviating NRC's need for the new FASB standard. The new FASB standard and the NRC's decommissioning funding status reports were developed by two distinct organizations for different purposes. The NRC agrees with GAO's statement that NRC, not FASB, is responsible for ensuring that NRC licensees will have adequate funds for decommissioning, and understands that the purpose of the FASB standard is to ensure the consistency of financial reporting and is not meant to provide a means of assuring the availability of adequate decommissioning funds.