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NUCLEAR ENERGY INSTITUTE

Marvin S. Fertel
SENIOR VICE PRESIDENT AND
CHIEF NUCLEAR OFFICER

July 1, 2003

Mr. Samuel J. Collins
Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

**SUBJECT: Administrative Changes to NRC Final Rule on
Decommissioning Trusts**

Dear Mr. Collins:

On December 24, 2002, the NRC published a Final Rule on "Decommissioning Trust Provisions" (67 Fed. Reg., 78,332). In four important instances, described below, the language of the final rule does not capture the stated intent of the Commission as reflected in the Supplementary Information accompanying the rule. We believe that these are administrative errors involving errors or omissions in drafting, although if uncorrected they could affect efficient implementation of the new rule.

The Nuclear Energy Institute (NEI)¹ requests the NRC to take appropriate action to correct these administrative errors. We believe the NRC can resolve them with a correcting amendment, as it did in the March 17 *Federal Register* (68 Fed. Reg., 12571), when it corrected the inadvertent omission of several paragraphs from the Final Rule on decommissioning trusts. Following is a summary of the identified drafting errors and proposed corrective wording.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.



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I. Notification Requirement for Administrative Expenses

The final rule language inadvertently failed to exclude ordinary administrative expenses from the notification requirement in new 10 C.F.R. §§ 50.75(h)(1)(iv) and 50.75(h)(2).

It is clear that the NRC recognized the need for this exclusion to allow payment of ordinary trust administrative expenses without prior notification (see 67 Fed. Reg. at 78,335-36). Indeed, the rule's Supplementary Information provides (at 67 Fed. Reg. 78,334) that any withdrawals requiring notice "are likely to be very rare" and not result in multiple notices from every licensee every year, as would occur if notices were required for every payment of trust administrative expenses. Further, this exclusion reflects established NRC practice: Existing NRC license conditions requiring notice of withdrawals routinely exclude ordinary administrative expenses from the notice condition. However, the above-cited provisions of the final rule failed to associate administrative expenses with an exclusion from the notice requirement. The NRC must correct this error to avoid inadvertently burdening both licensees and the Commission with numerous notices of routine administrative fee disbursements.

We suggest that after the language in 10 CFR §§50.75(h)(1)(B)(iv) and 50.75(h)(2) beginning "except for withdrawals being made under 10 CFR 50.82(a)(8) ...", NRC add "or for payment of ordinary administrative costs (including taxes) and other incidental legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund."

II. Effective Date of the New Rule

The new rule has a single, general effective date of December 24, 2003. The underlying intent of providing for a one-year implementation period was to allow for a smooth transition related to the implementation of new restrictions on decommissioning trusts (67 Fed. Reg. at 78,340-41). The restrictions of specific concern are set forth in 10 C.F.R. §§50.75(h)(1)-(3).

However, the application of that effective date to other provisions of the rule will adversely impact the smooth implementation of the rule. For example, the new direction concerning decommissioning funding in revised Sections 50.75(e)(1)(i) and (ii) should be available to licensees for purposes of their current funding plans and reports. Further, the application of the generic "no significant hazards

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consideration" finding for licensees who amend their licenses to reflect the conditions of the new rule (*see* Section 50.75(h)(4)) would not be available for licensees to actually implement the provisions in Sections 50.75(h)(1)-(3). The NRC should correct these inadvertent effects by making the changes other than those in Sections 50.75(h)(1)-(3) effective immediately.

III. Preserving the Option to Retain Existing License Conditions

The rule language does not reflect the clear intent of the Commission that individual licensees with *existing license conditions* should have the regulatory option of retaining those conditions. The Supplementary Information for the rule clearly indicates (at 67 Fed. Reg. 78,335) that licensees with existing license conditions governing their trusts (*e.g.*, plants previously transferred to deregulated generators) "will have the option of maintaining their existing license conditions or submitting to the new requirements." However, there is no provision in the new rule that gives licensees this option. The final rule language must be revised to correct this oversight. We suggest adding a new section 10 CFR §50.75(h)(5) to provide:

The provisions of this 10 CFR 50.75(h) are not applicable to any license that as of December 24, 2002 had existing license conditions relating to the terms and conditions of decommissioning trust agreements, unless the licensee elects to amend its license, consistent with the provisions of 10 CFR 50.75(h)(4) in which case the provisions of 10 CR 50.75(h) shall be effective upon the effective date of such license amendment.

IV. Investment Prohibition

Finally, the language of 10 CFR § 50.75(h)(1)(i)(a) fails to include a general prohibition against investments in nuclear plant owners, although such a prohibition was intended—subject to the exceptions provided for in the same section (market indices, a grandfather rule, and a 10 percent *de minimis* rule). We suggest that the term "the power reactor" be changed to read "any power reactor."

NEI requests that the NRC promptly correct these elements of the new Decommissioning Trust Rule to allow for its implementation consistent with Commission intent.

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Please contact me or Richard Myers (202.739.8021; rjm@nei.org) if you have any questions on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "M. S. Fertel", written in a cursive style.

Marvin S. Fertel

c: The Honorable Nils Diaz, Chairman, NRC
 The Honorable Edward McGaffigan, Jr., Commissioner, NRC
 The Honorable Jeffrey S. Merrifield, Commissioner, NRC
 Karen Cyr, Esq., General Counsel, NRC
 Mr. William D. Travers, EDO/NRC
 Mr. David Matthews, Director, NRC