



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 18, 2008

Mr. Thomas Joyce
President and Chief Nuclear Officer
PSEG Nuclear
P.O. Box 236, N09
Hancocks Bridge, NJ 08038

SUBJECT: SALEM NUCLEAR GENERATING STATION, UNIT NO. 2 - WITHDRAWAL OF
REQUEST FOR EXEMPTION FROM 10 CFR 50.82(a)(8) TO USE
DECOMMISSIONING TRUST FUNDS FOR DISPOSAL OF MAJOR
RADIOACTIVE COMPONENTS (TAC NO. MD8484)

Dear Mr. Joyce:

By letter dated April 7, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081050556), PSEG Nuclear LLC (PSEG or the licensee) requested an exemption from the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.82(a)(8)(i) and (ii) to permit the immediate withdrawal of up to \$5.47 million from the decommissioning trust funds established to meet the requirements of 10 CFR 50.75 for Salem Nuclear Generating Station (Salem), Unit No. 2. The licensee stated that the withdrawals would be used to dispose of major radioactive components (MRCs); four steam generators that were removed from Salem Unit No. 2 during the spring 2008 outage.

Withdrawals from the trust fund under 10 CFR 50.82(a)(8)(i)(A) are limited to legitimate decommissioning activities consistent with the definition of decommissioning. The disposal of MRCs during operations does not meet the definition of decommissioning. Therefore, an exemption is needed for the early use of decommissioning trust funds as proposed by the licensee.

The granting of an exemption is discretionary. Under 10 CFR 50.12, the Nuclear Regulatory Commission (NRC or the Commission) *may* grant an exemption from the requirements of 10 CFR Part 50 which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Special circumstances must be present before the Commission will even consider granting an exemption.

In 1996, the Commission was unequivocal when considering the issue of whether to allow withdrawals of decommissioning funds for the disposal of large components during operations. It stated that "allowing decommissioning trust fund withdrawals for disposals by nuclear power plants that continue to operate is not warranted. These activities are more appropriately considered operating activities and should be financed in that way [61 FR 39293, July 29, 1996]."

Recently, EnergySolutions, LLC requested that the Commission change its policy on the use of decommissioning funds during operations (see Petition for Rulemaking dated May 29, 2007, submitted by EnergySolutions, LLC, docketed as PRM-50-88). Since a change in Commission policy could have potentially brought into consideration a number of factors that would not be relevant or dispositive under the current policy, and there was no date certain when the

Commission would respond to the Petition for Rulemaking, the NRC staff issued a request for additional information on June 30, 2008, in anticipation of any possible change in Commission policy. The licensee responded by letter dated September 3, 2008 (ADAMS Accession No. ML082550401).

In a letter dated October 3, 2008, the NRC denied the EnergySolutions, LLC petition for rulemaking (ADAMS Accession No. ML082200419). As discussed in the letter and its associated *Federal Register* notice, the Commission has decided to not change its policy on the use of decommissioning funds during operations.

On November 5, 2008, the NRC staff held a conference call with PSEG. During the call the staff made the following points:

- 1) The NRC's policy on not using decommissioning trust funds for the early disposal of MRCs during operations is prudent and necessary generically to preserve and protect such funds. Other sources of funds can be used to dispose of MRCs during operations.
- 2) When the NRC articulated its policy against the use of decommissioning trust funds for the disposal of MRCs during operations, it did not suggest that MRCs should not, or could not be disposed of during operations using other sources of funding. In fact, the NRC considered this possibility, and stated that these disposals are considered operating activities and should be financed as such.
- 3) The NRC views decommissioning funding assurance policies and rules as of the utmost importance in ensuring that there will be sufficient funds to decommission a reactor upon permanent cessation of operations. Accordingly, the NRC expects that there would have to be extraordinary circumstances before any exemption request to withdraw funds early would be granted, particularly if there is no demonstration that there are no other sources of funds available to licensees to dispose of MRCs while a plant is operating.

Based on the discussion during the conference call and in consideration of the denial of the EnergySolutions, LLC petition for rulemaking, PSEG withdrew the subject exemption request as documented in a letter dated November 19, 2008. Accordingly, the NRC staff has terminated its review and is closing TAC No. MD8484. If you have any questions regarding this matter, I may be reached at 301-415-1420.

Sincerely,



Richard B. Ennis, Senior Project Manager
Plant Licensing Branch I-2
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-311

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