



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 27, 2012

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-11-0133

TITLE: OPTIONS TO EVALUATE REQUESTS TO USE
DISCOUNTED PARENT COMPANY GUARANTEES TO
ASSURE FUNDING OF DECOMMISSIONING COSTS FOR
POWER REACTORS

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 27, 2012.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", is written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-11-0133

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO		X			X	10/27/11
COMR. SVINICKI	X				X	2/10/12
COMR. APOSTOLAKIS		X			X	1/19/12
COMR. MAGWOOD		X			X	2/7/12
COMR. OSTENDORFF	X				X	1/12/12

NOTATION VOTE

RESPONSE SHEET

ML 113050111

RELEASED TO THE PUBLIC

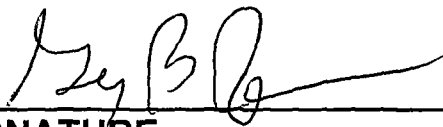
DATE 11/1/2011 INITIALS NAM1

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Gregory B. Jaczko
SUBJECT: SECY-11-0133 – OPTIONS TO EVALUATE REQUESTS
TO USE DISCOUNTED PARENT COMPANY
GUARANTEES TO ASSURE FUNDING OF
DECOMMISSIONING COSTS FOR POWER
REACTORS

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

10/27/11

DATE

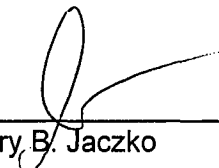
Entered on "STARS" Yes x No _____

**Chairman Jaczko's Comments on SECY-11-0133,
"Options to Evaluate Requests to Use Discounted Parent Company Guarantees to
Assure Funding of Decommissioning Costs for Power Reactors"**

I disapprove the staff's recommended option 3. Instead, I approve option 1, to not allow the sinking fund discount combination for determining decommissioning funding costs.

I appreciate staff seeking a creative way to allow use of a discounted parent company guarantee (PCG) for funding of decommissioning costs for power reactors given the Commission's indication of its interest in this mechanism. The staff has done a good job with option 3 of presenting a narrow, case-by-case application of permitting use of the discounted PCG in an obvious and appreciated attempt to mitigate some of the dangers of proceeding down this path. It is abundantly clear, however, from the staff's analysis that this is simply not the right tool to use for determining decommissioning funding assurance.

Ensuring that licensees have the funds necessary to adequately decommission a site is, at its core, a safety issue. Wrapping it in layers of financial details might obfuscate that, but it does not negate it. As the staff points out, in the Statement of Considerations for the 1998 Decommissioning Rule, the agency stated, "Making riskier financial assurance mechanisms available to riskier licensees compounds risk to the public that adequate funds will not be available when needed. Thus, prudent public policy may limit the range of mechanisms that should be offered to certain categories of licensees." I am not willing to support the increased risk to stakeholders, including local communities, States and Tribal governments, that allowing this funding scheme would create. I, instead, opt for the sounder public policy option of not allowing the use of discounted PCG to assure funding of decommissioning costs for power reactors.



Gregory B. Jaczko

6/27/11

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-11-0133 – OPTIONS TO EVALUATE REQUESTS
TO USE DISCOUNTED PARENT COMPANY
GUARANTEES TO ASSURE FUNDING OF
DECOMMISSIONING COSTS FOR POWER
REACTORS

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

02/ 10 /12

DATE

Entered on "STARS" Yes ☒ No _____

Commissioner Svinicki's Comments on SECY-11-0133
Options to Evaluate Request to Use Discounted Parent Company Guarantees to Assure
Funding of Decommissioning Costs for Power Reactors

I approve the staff's recommended Option 3, to allow the sinking fund discount combination with conditions on a case-by-case basis. As the staff notes, this option preserves the flexibility intended when the 1998 Decommissioning Rule was issued by allowing NRC to evaluate licensee requests to determine that the degree of assurance provided by the licensee's proposed method meets the equivalency requirement, and to impose conditions, where needed, to ensure decommissioning funding assurance. This approach is also consistent with the Commission's previous action in certain license transfer cases discussed in the SECY paper, in which the Commission articulated its "openness to funding arrangements not specifically enumerated in [10 C.F.R. § 50.75(e)(1)] subsections (i)-(v)." *Entergy Nuclear Operations* (James A. Fitzpatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-14, 53 NRC 488, 557 (2001). As further noted in that decision, "In promulgating [10 C.F.R. § 50.75(e)(1)] subsection (vi), [the Commission] intended to give applicants the flexibility necessary to structure methods outside the parameters of any one of the five methods set forth in subsections (i) through (v) or to combine portions of those subsections in such a way as to provide the same end-result of funding assurance." *Id.* at 550-551 (citation omitted). Option 3 is consistent with this precedent.

The Commission's staff requirements memorandum for SECY-10-0084 states that "The Commission did not support the categorical prohibition on the use of the net present value method for parent guarantees." Since 10 C.F.R. § 50.75(e)(1)(vi) neither prohibits nor explicitly sanctions the use of this technique, Option 3 is permissible under the regulation as it currently stands.

The SECY paper devotes significant attention to the decommissioning funding and business arrangements of the Zion facility. I agree with Commissioner Ostendorff that the Zion case should not be viewed as typical of decommissioning work as a whole and that Zion would more "represent a pilot business venture that by its very nature would be expected to have conservative business financial contingencies beyond what is normally necessary under NRC regulations." Consequently, the generalization of the circumstances of the Zion decommissioning to the generic underpinnings of our regulations as a whole is, as presented in the SECY paper, somewhat tortured and overwrought.

Lastly, I do not agree that the staff's March 2, 2011 workshop provided sufficient notice and opportunity to comment on proposed revisions to NUREG-1307. Furthermore, I do not assess the staff's proposed revisions to the NUREG to be "ministerial in nature." For example, certain formula values to be used under 10 C.F.R. § 50.75(c)(2) are cited to NUREG-1307; i.e., some of the NUREG's contents are incorporated by reference into the regulation. Consistent with the NRC's "openness" Principle of Good Regulation, therefore, any proposed staff revisions to NUREG-1307 should be noticed for public comment prior to being adopted.



Kristine L. Svinicki 02/10/12

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Apostolakis

SUBJECT: SECY-11-0133 – OPTIONS TO EVALUATE REQUESTS
TO USE DISCOUNTED PARENT COMPANY
GUARANTEES TO ASSURE FUNDING OF
DECOMMISSIONING COSTS FOR POWER
REACTORS

Approved ☐ Disapproved ☒ Abstain ☐

Not Participating ☐

COMMENTS: Below ☒ Attached ☐ None ☐

I disapprove the staff's recommended option 3. I approve option 1 instead.



SIGNATURE

1/19/12

DATE

Entered on "STARS" Yes ☒ No ☐

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MAGWOOD

SUBJECT: SECY-11-0133 – OPTIONS TO EVALUATE REQUESTS
TO USE DISCOUNTED PARENT COMPANY
GUARANTEES TO ASSURE FUNDING OF
DECOMMISSIONING COSTS FOR POWER
REACTORS

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

2/7/12

DATE

Entered on "STARS" Yes X No _____

**Commissioner Magwood's Comments on
SECY-11-0133, "Options to Evaluate Requests to Use Discounted Parent Company
Guarantees To Assure Funding of Decommissioning Costs for Power Reactors"**

I support allowing industry to apply a responsible range of financial mechanisms to meet the requirements of the applicable regulations associated with funding decommissioning costs. For example, I believe it reasonable to allow for the combination of sinking funds, parent company guarantees (PCGs), and the licensee's commitment to adjust the PCGs annually to account for changes in decommissioning cost estimates.

However, it is vital that we not lose sight of the purpose of the decommissioning trust funds—to assure that the resources are available for future decommissioning activities. Previous Commissions have already concluded that a parent guarantee method for decommissioning fund assurance is a "mere promise—to pay the money at some future time," which provides less assurance than money already deposited in a Nuclear Decommissioning Trust. Nevertheless, I am confident that PCGs can provide this assurance so long as appropriate financial tests are completed to confirm the viability of the guarantees. However, allowing licensees to discount the guarantees—which are promissory notes and not cash accumulating value in an account—appears to me to cross the line between allowing the use of appropriate financial instruments and allowing the decommissioning trust funds to become a financial fiction. I therefore disapprove the staff's recommendation to allow, on a case-by-case basis, the sinking fund discount combination with conditions.

That said, after careful consideration and discussion with staff and various discussions with stakeholders, I see this as a close call. I do not view this as a matter of safety or an issue that has substantial risk of placing future burdens on state, local, or tribal governments. In order to apply a PCG, the licensee must demonstrate the availability of positive assets six times the size of the guarantee. Companies that have these resources are unlikely to default over the relatively small sums associated with the discounting of PCGs. However, if the ability to pay at the end of the day were the only criterion, it would be permissible for licensees to provide promissory notes for the entirety of the anticipated decommissioning cost.

Licensees make a fair argument that our current financial requirements, which were established 24 years ago, place a considerable burden on companies that desire to apply PCGs. It is quite possible that our rules do not allow industry to apply the range of tools that are broadly used by all businesses to manage long-term financial risks. I would be sympathetic to further updating our rules and requirements to address such concerns. But I do not believe that eroding the logic of our current rules is the appropriate path to deal with any underlying defects.



William D. Magwood, IV

2/7/12

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER OSTENDORFF

SUBJECT: SECY-11-0133 – OPTIONS TO EVALUATE REQUESTS
TO USE DISCOUNTED PARENT COMPANY
GUARANTEES TO ASSURE FUNDING OF
DECOMMISSIONING COSTS FOR POWER
REACTORS

Approved ☒ Disapproved ☐ Abstain ☐

Not Participating ☐

COMMENTS: Below ☐ Attached ☒ None ☐


SIGNATURE

1/12/12
DATE

Entered on "STARS" Yes ☒ No ☐

**Commissioner Ostendorff's Comments on SECY-11-0133,
"Options to Evaluate Requests to Use Discounted Parent Company Guarantees to
Assure Funding of Decommissioning Costs for Power Reactors"**

I approve the staff's recommendation, Option 3, which would allow sinking funds to be discounted with conditions on a case-by-case basis. I was able to make this determination due in large measure to the detailed explanation of decommissioning funding assurance (DFA) approaches and the historical background on the application of § 50.75 for specific license transfer cases. In addition to providing a full picture of the factual circumstances, I want to commend the staff for providing their candid views to the Commission. Regarding Option 3, I offer the following perspectives and a proposal to make case-by-case approvals enforceable.

Option 3 is suitable for dealing with nuclear decommissioning trust (NDT) fund shortfalls attributed to episodic market declines, such as that of the historic market decline in 2009. But, as I stated in my vote comments on SECY-10-0084, this economic event was of historic proportions and is not necessarily the sole appropriate measure of the effectiveness of our NDT fund assurance expectations of licensees. While the 27 licensees did experience temporary shortfalls in their NDT funds, I understand from SECY-11-0149 that all but one licensee has now resolved their reported shortfalls.

The staff's description of DFA plans for the Zion facility was illustrative of how decommissioning activities and business arrangements can be unique to each nuclear plant's locality and stakeholder involvement. One caveat is that I do not believe the Zion case should be viewed as typical of decommissioning work. This case seems to represent a pilot business venture that by its very nature would be expected to have conservative business financial contingencies beyond what is normally necessary under NRC regulations. Nevertheless, it demonstrates the potential complexities of site-specific DFA arrangements. Furthermore, the Zion example demonstrates the value of Option 3's provision for staff evaluation of licensee requests for a degree of assurance determination on a case-by-case basis.

Regarding Option 3, the Commission's staff requirements memorandum for SECY-10-0084 clearly states that "The Commission did not support the categorical prohibition on the use of the net present value method [(NPV)] for parent guarantees." Although § 50.75(e)(1)(vi) does not specifically prohibit the future use of NPV, it does not specifically sanction it either. I find that Option 3 is consistent with the provisions of § 50.75(e)(1)(vi), which allows for "other mechanisms" to provide decommissioning funding assurance. This regulation provides a means to evaluate licensee approaches that may be acceptable (e.g., NPV methods), but are not explicitly discussed in our current NRC regulations. Given the above and other considerations, I therefore approve the case-by-case evaluation approach.

Lastly, Option 3 should be enforceable to ensure accountability. I find that a licensee's commitment alone may not be sufficient in this regard. To provide enforceability of regulatory expectations, the staff should require a license condition if it approves certain case-by-case licensee requests to apply NPV methods or "any other mechanisms or combination of mechanisms for assurance of decommissioning funds" under provisions of 50.75(e)(1)(vi).