

**TECHNICAL EVALUATION REPORT: FINANCIAL ASSURANCE UPDATE FOR  
WESTERN NUCLEAR INC.'S, SPLIT ROCK SITE IN JEFFREY CITY, WYOMING,  
SOURCE MATERIALS LICENSE SUA-56, DOCKET 040-1162**

**BACKGROUND**

Western Nuclear, Inc. (WNI) is the holder of U.S. Nuclear Regulatory Commission (NRC) License No. SUA-56 for the Split Rock conventional uranium mill site near Jeffrey City, Wyoming. WNI has been an NRC licensee since 1958. The Split Rock site ceased active uranium recovery operations in 1987 and has been engaging in final site reclamation activities since then. In 1971, as authorized by Amendment 2 to SUA-56, WNI became a wholly owned subsidiary of Phelps Dodge Corporation (PDC). On September 5, 2007, WNI informed NRC that PDC was acquired by Freeport-McMoRan Copper and Gold Inc. (Freeport) (Agencywide Document Access and Management System (ADAMS) Accession Number ML072710031).

By letter dated March 27, 2014, WNI submitted its annual 2014 financial assurance update (ML14093B353). By letter dated June 23, 2014, NRC requested additional information (RAI) from WNI on its financial assurance update, including a revised Parent Company Guarantee (PCG) to reflect Freeport as its parent company (ML14160B046). By letter dated September 10, 2014, NRC made a second request for information. (ML14247A651).

WNI responded on October 7, 2014, with an amended 2014 surety update amount (ML14296A390). On October 14, 2014, Freeport submitted, on the behalf of WNI, an updated PCG identifying Freeport as WNI's parent company and guaranteeing decommissioning costs at the Split Rock Facility (ML14294A115).<sup>1</sup> By letter dated December 17, 2014, NRC informed WNI it was required to provide an acceptable standby trust agreement (ML14338A505). The letter also requested that WNI provide Freeport's off-balance sheet transactions, which are required under the PCG financial test currently in effect.

By letter dated February 27, 2015, WNI submitted its standby trust agreement (ML15082A122). By letter dated March 27, 2015, WNI submitted a revised financial assurance update (ML15093A324). By letter dated April 21, 2015, NRC notified WNI that the March 27, 2015 financial assurance update did not include Freeport's off-balance sheet transactions, which are necessary if WNI relies on a Freeport's PCG (ML15103A606). WNI submitted a revised special accountant's report and a detailed financial test with Freeport's off-balance sheet transactions in a letter dated July 16, 2015 (the documents contain proprietary information and are not publically available).

**REGULATORY FRAMEWORK**

Materials License SUA-56 was issued to WNI under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 40, Domestic Licensing of Source Material. WNI must maintain an NRC-approved financial surety arrangement to cover estimated costs for its site decommissioning and decontamination activities, pursuant to Part 40, Appendix A, Criteria 9, "Financial Criteria"

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<sup>1</sup> Freeport-McMoRan Inc., Submittal of Financial Assurance Update and Notice of Confidential Commercial Information in Financial Documents Submitted Pursuant to Western Nuclear, Inc.'s Split Rock.

and Materials License SUA-56 License Condition 29. WNI is also required to provide annual updates to surety amount.

10 CFR Part 40, Appendix A, Criterion 9 states:

Financial surety arrangements must be established by each mill operator before the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements must be based on Commission-approved cost estimates in a Commission-approved plan, or a proposed revision to the plan submitted to the Commission for approval....

Additionally, 10 CFR 40.36(e)(2) states that “[a] parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to part 30 of this chapter.”

Appendix A to 10 CFR Part 30, “Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning” states that:

[a]n applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test.

## **NRC STAFF REVIEW**

### Annual Surety Update

The NRC staff reviewed all the financial assurance documentation supporting WNI’s Part 40 license under the guidance in NUREG-1620, Revision 1.<sup>2</sup> The NRC staff finds WNI’s submittal follows the relevant guidance in Appendix C, NUREG-1620.<sup>3</sup> WNI describes the adjustments to surety amounts made by WNI and Freeport as follows:

- (1) Adjustments for Inflation - WNI’s submittal includes a request for an amendment to its license’s current surety amount based upon an adjustment for inflation between July 2013 and August 2014. The result is an increase to the surety amount of \$18,203 for a new total amount of \$1,128,155.
- (2) Changes in Plans – WNI’s submittal does not include any changes in size or method of operation; licensee-initiated changes in reclamation plans or reclamation decommissioning activities; or any NRC required adjustments to its reclamation plans.

<sup>2</sup> "Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act of 1978," dated June 2003 (ML032250190).

<sup>3</sup> "Outline Recommended by the U.S. Nuclear Regulatory Commission Staff for Preparing Site-Specific Facility Reclamation and Stabilization Cost Estimates for Review."

### Parent Company Guarantee

Freeport's October 14, 2014 submittal included:

- a letter from Freeport's Chief Financial Officer;
- the PCG provided for WNI by Freeport, guaranteeing the Split Rock Facility's decommissioning costs ;
- the guarantor's financial balances and calculations;
- the results of the financial test; and
- an Auditor's Special Report.

The NRC staff reviewed the updated PCG under the criteria in Appendix A to 10 CFR Part 30 and NRC guidance in NUREG-1757, Volume 3, Rev. 1, Appendix A.8. The staff determined additional information was needed to complete the review of the WNI's financial assurance package. The staff issued RAIs in letters dated February 27, 2015 (ML15082A122) and March 27, 2015 (ML15093A324). WNI responded to the RAIs by letters dated February 27, 2015 (ML15082A122), March 27, 2015 (ML15093A324), and July 16, 2015 (report is not publically available because it contains proprietary information). The RAI responses included a copy of WNI's standby trust agreement, a letter from Freeport's Chief Executive Officer, and a revised auditor's special report supported by Freeport's off-balance sheet transactions.

Freeport, as the parent company of WNI, must satisfy the criteria found in 10 CFR Part 30, Appendix A, Section II.A.1 or A.2, in order for WNI to use a PCG. WNI's submittal complies with 10 CFR Part 30, Appendix A, Section II.A.2 (the "Financial Test"). The Financial Test, in pertinent part, requires that Freeport have:

- (i) A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
- (ii) Tangible net worth at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof; and
- (iii) Tangible net worth of at least \$21 million; and
- (iv) Assets located in the United States amounting to at least 90 percent of the total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof.

Freeport's current bond rating of the most recent unsecured bond issuance is BBB, as rated by Standard & Poor's. Freeport's tangible net worth exceeds six times the sum of the current decommissioning cost estimate of the facilities covered by the revised PCG. Freeport's tangible net worth is at least \$21 million. Freeport's assets located in the United States exceed six times the sum of the current decommissioning cost estimate of the facilities covered by the PCG. Therefore, the staff finds that Freeport meets the requirements of the Financial Test at 10 CFR Part, 30, Appendix A, Section II.A.2.

## **CONCLUSIONS**

The NRC staff finds the annual surety update, parent company guarantee, and Freeport's supporting documentation acceptable. WNI's financial assurance submissions meet the requirements of 10 CFR 40.36(e)(2), Part 40, Appendix A, Criterion 9, and 10 CFR Part 30, Appendix A. The licensee provided a revised surety update which covers the remaining decommissioning activities and a revised financial assurance update for decommissioning to cover the remaining site reclamation costs. These documents name Freeport as parent company guarantor for the reclamation costs at the Split Rock site. The parent company guarantee includes all the required elements to meet the financial test.

## **SUGGESTED LICENSE AMENDMENT**

The licensee shall maintain an NRC-approved financial surety arrangement adequate to cover the estimated decommissioning and reclamation costs consistent with 10 CFR 40, Appendix A, Criteria 9 and 10. Costs will include work undertaken by a third party for the decommissioning and decontamination of the mill and mill site, for the reclamation of any tailings or waste disposal areas, for ground-water restoration as warranted, and for the long-term surveillance fee.

When the NRC approves a revised decommissioning and reclamation plan, the licensee shall submit for NRC review and approval, a proposed revision to the financial surety arrangement if estimated costs of the new plan exceed the amount of the existing surety. The licensee shall have a revised surety approved by the NRC in effect, not later than three (3) months after the NRC approves a revised plan

10 CFR Part 40, Appendix A, Criteria 9 and 10 require that annual updates to the surety amount be submitted to the NRC at least 3 months prior to December 30 of each year. In case NRC approval of a proposed revision to the surety is not completed thirty (30) days prior to the expiration date of the existing surety arrangement, the licensee shall extend the existing surety arrangement for one (1) year.

Annual updates or revisions shall include a breakdown of the cost estimates with adjustments for inflation and the basis for the cost estimates. The basis for the cost estimate is the NRC-approved reclamation/decommissioning plan or NRC-approved revisions to the plan. The licensee shall maintain a contingency fee of at least fifteen (15) percent of the total cost estimate and the licensee must identify any changes in the engineering plans, or to activities performed at the site, and to any conditions that affect estimated costs for site closure.

The licensee shall provide the NRC with all surety-related correspondence submitted to the State of Wyoming, a copy of the Wyoming's surety review, and the final Wyoming-approved surety arrangement. The licensee shall also ensure that the surety expressly identifies the NRC's portion of the surety, when it is authorized to be held by the State of Wyoming.

Western Nuclear's NRC-approved financial assurance arrangement includes a surety, the PCG issued by Freeport-McMoRan Copper and Gold Inc., and a standby trust agreement that is accessible to the NRC. The total NRC portion of the financial assurance amount shall be no less than

\$ 1,128,155.00. The financial assurance shall be continuously maintained in accordance with the recitals of the PCG unless and until a replacement is authorized by both the NRC and the State of Wyoming, to ensure compliance with 10 CFR Part 40, Appendix A, Criterion 9 and 10.

[Applicable Amendments: 24, 45, 53, 64, 66, 70, 72, 76, 85P, 93, 94, 95, 97, 100, 101, 102, 103, 104, 105]