

TECHNICAL EVALUATION REPORT: ALTERNATE FINANCIAL ASSURANCE MECHANISM 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 its former Split Rock conventional uranium mill site near Jeffrey City, Wyoming. WNI has been an Atomic Energy Commission or NRC licensee since 1958. The Split Rock site ceased active uranium recovery operations in 1987.

By letter dated April 29, 2016, WNI submitted a proposal for an alternative financial assurance mechanism to the NRC, in the form of a surety bond, to replace its current surety mechanism, a parent company guarantee (PCG) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16137A117). By letter dated June 1, 2016, the NRC submitted a letter to WNI informing them that additional information was necessary in order to evaluate the proposed alternate financial surety arrangement (ADAMS Accession No. ML16133A537). The additional information requested included an updated standby trust agreement (STA) with specific revisions to the STA's Schedules A and B to reflect the current Commission-approved cost estimate and the change in financial surety. By letter dated June 7, 2016, WNI submitted an updated STA, with revisions to Schedules A and B reflecting the current Commission-approved cost estimate and the replacement financial surety to the NRC (ADAMS Accession No. ML16127A088).

REGULATORY FRAMEWORK

WNI's license, SUA-56, was issued under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 40, Domestic Licensing of Source Material. 10 CFR 40, Appendix A, Criterion 9, "Financial Criteria" and License Condition 29 of Materials License SUA-56 requires WNI to maintain an NRC-approved financial surety arrangement to cover estimated costs for decommissioning and decontamination activities at their sites.

10 CFR 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, Appendix A, Criterion 9 requires licensees who wish to provide an alternative financial surety mechanism in lieu of its existing one to notify NRC in a timely manner and submit an acceptable replacement for NRC review and approval.

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

The term of the surety mechanism must be open ended, unless it can be demonstrated

that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a surety instrument which is written for a specified time (e.g., 5 years) and which must be automatically renewed unless the surety notifies the beneficiary (the Commission or State regulatory agency) and the principal (licensee) with reasonable time (e.g., 90 days) before the renewal date of their intention not to renew. In such a situation, the surety requirement still exists and the licensee would be required to submit an acceptable replacement surety within a brief time to allow at least 60 days for the regulatory agency to collect.

Furthermore, 10 CFR 40, Appendix A, Criterion 9 states that if the alternative financial surety mechanism is not a trust fund, the licensee must establish a standby trust fund in order to receive funds from the surety, if necessary, for the benefit of the appropriate regulatory authority.

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

Financial surety arrangements generally acceptable to the Commission are: (1) Trust funds; (2) Surety bonds; (3) Irrevocable letters of credit; and Combinations of the financial surety arrangements as may be approved by the Commission. If a trust is not used, then a standby trust must be set up to receive funds in the event the Commission or State regulatory agency exercises its right to collect the surety.

NRC STAFF REVIEW

The NRC staff reviewed WNI's alternative financial surety mechanism and STA agreement against the regulatory requirements in 10 CFR, Part 40, Appendix A, Criterion 9. WNI notified NRC more than 60 days before their decision to replace its existing PCG surety arrangement with an alternate financial surety mechanism in the form of a surety bond. The surety bond amount was equal to the current Commission-approved cost estimate of \$1,132,374. NRC staff finds the surety bond submitted by WNI adheres to the relevant regulatory requirements in 10 CFR Part 40, Appendix A, Criterion 9, and is therefore acceptable.

Additionally, WNI provided an updated STA agreement which included revisions to its schedules A and B to reflect both the current Commission-approved cost estimate of \$1,132,374 and the new financial surety bond. NRC staff finds that the STA agreement submitted by WNI adheres to the relevant regulatory requirements in 10 CFR Part 40, Appendix A, Criterion 9, and is therefore acceptable.

CONCLUSIONS

Based on the above, the NRC staff finds that the replacement of the PCG with the surety bond and associated revised STA meets the requirements of 10 CFR 40, Appendix A, Criterion 9 and is therefore acceptable. The licensee has provided an acceptable replacement surety mechanism that reasonably covers the remaining decommissioning activities and a revised STA that reflects the current cost estimate and new financial surety mechanism.

LICENSE AMENDMENT

Based upon the above, the NRC finds that License Condition 29 to SUA-56 should be amended as follows:

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. If 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.

If the surety is authorized to be held by the State of Wyoming, 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 if the surety is held by the State of Wyoming, the surety expressly identifies the NRC's portion of the surety.

Western Nuclear's NRC-approved financial assurance arrangement includes a surety, the surety bond issued by Westchester Fire and Insurance Company, 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 \$ 1,132,374.00. The financial assurance shall be continuously maintained until a replacement is authorized by the NRC so as 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, 106,107]