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ACCESSION # BR:9607020204 DOC.DATE: 96/06/28 NOTARIZED: NO DOCKET #
 FACIL:50-315 Donald C. Cook Nuclear Power Plant, Unit 1, Indiana M 05000315
 50-316 Donald C. Cook Nuclear Power Plant, Unit 2, Indiana M 05000316
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SUBJECT: Provides comments on issues involving decommissioning
funding re deregulation in response to 960408 FRN.

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June 28, 1996

AEP:NRC:0508AT

Docket Nos.: 50-315
50-316

U. S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D. C. 20555

Gentlemen:

Donald C. Cook Nuclear Plant Units 1 and 2
FINANCIAL ASSURANCE REQUIREMENTS FOR DECOMMISSIONING

On April 8, 1996, the Nuclear Regulatory Commission published in the Federal Register an advanced notice of proposed rulemaking on the financial assurance requirements for decommissioning nuclear power reactors. The Federal Register Notice requested input on the issues relating to the form and content of the NRC's requirements as they relate to electric utility deregulation. This letter provides our comments on the issues involving decommissioning funding as it relates to deregulation.

The changes occurring in the electric utility industry are evolutionary. No one knows what the final outcome will be or where or when changes will take place. It would appear premature for the NRC to issue rulemakings on decommissioning at this time. It would be more productive to await development of a clearer picture of how restructuring will impact the industry before rulemakings are made. The NRC should continue to study development of the issues on a time table that is consistent with their rate of change and emerging trends. The NRC should also recognize that deregulation will be a gradual process that is unlikely to affect all nuclear utilities uniformly. Future rulemakings should not impact a plant that is operating safely and adequately funding its decommissioning accounts.

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Our specific comments to the Federal Register Notice are in the attachment. The attachment is organized to correspond to the issues and numbering in the Federal Register Notice. Only the items for which we have comments will be included. Please refer to the Federal Register Notice for the issue or question.

Sincerely,



E. E. Fitzpatrick
Vice President

llg

Attachment

cc: A. A. Blind
G. Charnoff
H. J. Miller
NFEM Section Chief
NRC Resident Inspector - Bridgman
J. R. Padgett

A. *Timing and Extent of Electric Utility Industry Deregulation*

- A.1. The time table for deregulation and the extent of deregulation is not yet clear. Changes are occurring but the time table and utility structure that result are unknown at this time.
- A.2. At this time it is difficult to predict the precise outcome of the current effort to restructure the electric utility industry. The Federal Energy Regulatory Commission (FERC) and over half of the state regulatory commissions have instituted proceedings to study the deregulation of the electric utility industry. To date, it appears that only a few states have proposed mechanisms for greater customer choice and competition alternatives, while several others are exploring more limited competition experiments.
- A.3. States with the highest cost of electricity have taken the lead in considering electric restructuring, which is logical as they believe they have the greatest potential for savings. Some low-cost States may not embrace competition as aggressively and may believe that there is no need for action until restructuring matters have been resolved.

B. *Stranded Costs*

- B.1. There is universal agreement that nuclear plants must continue to operate safely in a competitive electric industry. From an economic standpoint, nuclear costs, just like costs of other types of generating units, are broken down into fixed and marginal costs. The recovery of these fixed and marginal costs has drawn much attention in the discussions concerning restructuring.

In a competitive generation market, nuclear power plants will have to be cost effective on a marginal cost basis, including provisions set aside for decommissioning, in order to continue operation. With their relatively low fuel costs, nuclear plants should be in a favorable position to compete on this basis with other types of generating units. The sale of this competitively produced generation will be the source of funds to cover future operations and decommissioning. If energy is not produced at a reasonable cost, the nuclear unit may have to be shut down on a temporary or permanent basis, or even prematurely decommissioned.

The recovery of the stranded costs has been one of the most difficult issues to resolve. Arguments for and against the recovery of investments in uneconomic plants have been made with no consensus being reached. A number of mechanisms including an access fee on the "wires" or an exit fee for

leaving the system have been offered. The FERC's open access rule provides for recovery of stranded costs.

C. *Nuclear Financial Qualifications and Decommissioning Funding Assurance.*

- C.1. If plants are shutdown prematurely, it is anticipated that regulatory commissions will recognize an acceptable stranded cost and provide an appropriate mechanism to recover the cost.
- C.2. It is not apparent that any licensee will fall outside the 10 CFR 50.2 definition of "electric utility" in the near future. In fact, some may remain consistent with the 10 CFR 50.2 definition of an electric utility even in a more deregulated environment. In this regard, we believe it is important to recognize that the 10 CFR 50.2 definition relates primarily to the recovery of costs either directly or indirectly through rates or, in fact, through other regulatory-mandated orders and does not require a specific organizational structure (e.g., integrated transmission and distribution, and generation company). In this regard, we believe that as long as a licensee is still recovering costs, in full or partially, either directly or indirectly under the authority of state and/or federal regulations, they should be considered an "electric utility" under 50.2 of the NRC's regulations.
- C.3. With the restructuring of the electric utility industry, many changes could occur effecting the reorganization of nuclear utilities. The NRC should plan to review each case individually. The NRC should not use their approval to force complete funding assurance which may make a reorganization unfeasible. The NRC does have a responsibility to not permit transfers of licenses if this would substantially increase the likelihood of inadequately funded decommissioning or the possibility of inappropriate plant operations.
- C.4. Alternative forms of assurances could be expensive if available, and they add to the economic cost of nuclear generation. They should be considered only when clearly warranted.
- C.5. We believe that the state PUCs and the FERC generally have been quite responsible in allowing nuclear utilities to set aside provisions for nuclear decommissioning when the amount required has been clearly demonstrated.
- C.6. Requiring licensees to accelerate the collection of decommissioning funds could make nuclear energy less competitive during the accelerated funding period.

These ideas might have merit if regulatory commissions would permit accelerated collections and the market would support such rates. Neither condition is certain and indeed both are questionable. To the extent all nuclear plants do it, the relative adverse affect on any one company is reduced; although compared with gas or other generation or options available through independent power producers, there is still an adverse cost impact. In some cases it could affect the economic viability of the plant.

Furthermore, the NRC should consider that Internal Revenue Service regulations are designed to prevent both more rapid than levelized funding and excessive funding of nuclear decommissioning. The tax ramifications of this proposal and the effect of these tax impacts on economic costs could be significant.

- C.7. The greatest contributor to increasing decommissioning costs and uncertainty as to the ultimate amount required for decommissioning has been the federal government's failure to develop a fuel repository. Other similar causes of increasing cost and uncertainty are associated with the status of low level waste disposal sites and other changing governmental requirements. It would seem more constructive for NRC to devote its efforts and expertise to publicizing and helping solve these "cost driven" problems rather than to focus primarily on adding requirements for licensees.

Reasonable contingency reserves are appropriate and what is reasonable is a function of the level of uncertainty. However, excessively large contingency reserves are not likely to be accepted by utility rate regulators or the market place and will add to current costs. The best solution is to make estimates as accurate as possible, recognizing some degree of uncertainty will always exist, and support actions which reduce cost and uncertainty.

- C.8. It appears to us that it may not be feasible for the industry to develop a captive insurance pool to pay for decommissioning funding shortfalls. This situation is quite different from coverage provided by existing industry nuclear insurance pools. These cases involve events where the casualty risks of the insured units are relatively uniform and a claim is triggered by an accident which, by its nature, is unpredictable and guarded against with great diligence. The success of Nuclear Electric Insurance Limited (NEIL) has been due to a constant focus on good, safe operating practice, prompt correction of operating or other weaknesses and other actions designed to minimize the likelihood that a claim will ever be made because of a nuclear accident. Premature decommissioning arising from such an accident is

already an insured event under NEIL policies to a limited extent. Stabilization and decontamination expenses have first priority. After covering such costs and when losses exceed \$500 million, NEIL provides for premature decommissioning liability coverage within the remaining policy limit up to the amount of the shortfall in the decommissioning trust funds.

This is quite different from a voluntary premature shutdown which is due to economic or competitive factors. It is difficult to visualize broad industry support for a mutual insurance pool in which the first to act for strategic or competitive reasons will receive the assets provided by the others participants. The "trigger" for such a claim is not due to chance and cannot be influenced by the constraints and surveillance which characterize NEIL's current insurance program.

D. *Decommissioning Funding Assurance and a Federal Government Licensee.*

- D.1. We believe that all customers should be able to receive the benefits of electric competition, including those served by governmental entities. We also advocate that, to the extent possible, a level playing field should be established so that investor-owned and governmental-owned utilities can compete fairly. As a general matter of course, we believe that the same decommissioning rules which apply to investor-owned utilities should also apply to governmental entities.

E. *Status of Decommissioning Trust Funds During Safe Storage Period.*

- E.1. We support the Commission's proposing to remove the arbitrary prohibition against assuming a positive earnings return during the post-shutdown period as a conservative estimating procedure.

However, NRC should not attempt to establish a quantitative measure of an appropriate allowed return. The net return assumed (positive, negative or zero) could change if recent high cost escalation rates are brought under control. The net return would also change as trust fund investment policy is modified as the time for expenditures approaches. The criteria should be to use the most reasonable assumption in the circumstances for this return factor.

- E.2. The full period should be allowed. The net return rate may not be constant during the entire period. It should also be noted that "extended safe storage periods" can exist in DECOM and should not be limited to SAFSTOR.

F. *Reporting on the Status of Decommissioning Funds.*

- F.1. Additional reporting requirements need not be adopted by NRC as long as the licensee remains subject to public utility regulation. Should reporting be required, it should be limited to the amount of accumulated trust fund balances. The NRC should have sufficient expertise to evaluate the reasonableness of trust fund accumulations based on its knowledge of the size and type of reactor.
- F.2. To the extent reporting is limited to trust fund balances, annual reporting would be reasonable.

