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Mr. John Tappert, PE  
Director, Division of Rulemaking, Environmental, and Financial Support  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C., 20555-0001

Dear Mr. Tappert;

I am writing on behalf of the Decommissioning Plant Coalition<sup>1</sup> (DPC) to provide views on how best to proceed to transition to the development of a revised rule consistent with direction in SRM – 19 – 0068, Direct Final Rule – Alternatives to the Use of Credit Ratings.

First, we appreciate that the staff and the Commission have taken a step back from a proposed direct final rule on this matter and offer our comments to assist in ensuring that the NRC and the industry take a measured approach to examining what response, if any, is necessary. As such, we do not expect a specific response beyond an acknowledgement from the NRC to this letter but do expect our suggestions will inform your further efforts; we would appreciate the opportunity to answer any questions you may have and/or to participate in further discussions on this matter.

First, we suggest that both the NRC and licensees review and exchange views on whether the plain language of PL-111-203 (The Dodd-Frank Act) requires any action on the part of the NRC. Section 939A requires the agencies to act, "as each respective agency shall determine as appropriate for such regulations<sup>2</sup>." In

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<sup>1 1</sup> The Decommissioning Plant Coalition (DPC) was established in 2001 to ensure a coordinated focus on legislative and regulatory issues unique to what was then a relatively small number of decommissioning plants. Permanently shutdown plants represented by the DPC have included: Connecticut Yankee (CT), Crystal River (FL), Duane Arnold (IA), Humboldt Bay (CA), Kewaunee (WI), LaCrosse (WI), Maine Yankee (ME), Pilgrim (MA), Rancho Seco (CA), San Onofre (CA), Vermont Yankee (VT), Yankee Rowe (MA), Big Rock (MI), and Zion (IL).

<sup>2</sup> Absent finding any legislative history on how this provision was intended to apply to any activities outside the investment community, the structure of the provision alone shows that, "as each respective agency shall determine...", " follows, "Each such agency shall modify any such regulations identified by the review conducted under subsection (a)," not the two prepositional clauses in that section. It gives the agency wide discretion. Given the historical success of licensees meeting the requirement to provide reasonable assurance of the availability of funds for

as much as the Appendix A of Part 30 provides direction on how a licensee might guarantee a requirement for Decommissioning Trust Funds surety, the requirement is to provide reasonable assurance of the availability of funds, not a requirement to use credit ratings alone to meet the actual requirement. Under any circumstance, the Commission could elect to modify its regulations to ensure that any ratings utilized under II.A.2.i. of Appendix A, 10 CFR Part 30, be issued by firms that meet the improvements specified in Subtitle C of the Dodd-Frank law.

We further base our recommendation to review the need for agency action on a cursory review of the varying ways that agencies have acted upon Section 939A. Some have not yet reported any action; some have, we understand, removed rule language to guidance; and others have responded with varying alternatives. Rather than relying on Internet searches for or anecdotal evidence of agencies' activities in response to Section 939A, we recommend a more structured and thoughtful review that focuses on the way other agencies that have missions outside the regulation of the investment community have approached this matter.

Finally, we believe an earnest dialogue with the industry to evaluate and develop useful alternatives will result in information that, in concert with our other recommendations, will make decisions on staff actions pursuant to the above-cited SRM robust and meaningful.

Rest assured the DPC will play a helpful role in the activities you undertake. Do not hesitate to contact us should you have questions on our recommendations.

Sincerely,



Wayne Norton  
Executive Spokesperson  
Decommissioning Plant Coalition

cc: John Lubinski, Director, Office of Nuclear Material Safety and Safeguards  
K. Steven West, Deputy Executive Director for Materials, Waste, Research,  
State, Tribal, Compliance, Administration, and Human  
Capital Programs

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decommissioning, that Appendix A. II. A. 2. i. is not an intended target of the Dodd-Frank legislation is a reasonable agency conclusion.