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PROPOSED RULE PR 30,40,50,70,72
(58 FR 3515)

CP&L

Carolina Power & Light Company

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United States Nuclear Regulatory Commission
ATTENTION: Document Control Desk
Washington, DC 20555

H. B. ROBINSON STEAM ELECTRIC PLANT, UNIT NO. 2
DOCKET NO. 50-261/LICENSE NO. DPR-23

SHEARON HARRIS NUCLEAR POWER PLANT
DOCKET NO. 50-400/LICENSE NO. NPF-63

BRUNSWICK STEAM ELECTRIC PLANT, UNIT NOS. 1 AND 2
DOCKET NOS. 50-325 AND 50-324/LICENSE NOS. DPR-71 AND DPR-62

FEDERAL REGISTER, PAGE 3515, JANUARY 11, 1993,
"SELF-GUARANTEE AS AN ADDITIONAL FINANCIAL
ASSURANCE MECHANISM"

Gentlemen:

REFERENCE: Federal Register, Page 4099, January 13, 1993, "Timeliness in
Decommissioning of Materials Facilities"

Carolina Power & Light Company (CP&L) is pleased to submit this response to
the petition for rulemaking information provided in the Federal Register, page
3515, January 11, 1993, titled, "Self-Guarantee as an Additional Financial
Assurance Mechanism," and to the draft Regulatory Analysis for the proposed
rule.

Though we understand that electric utility reactor licensees under 10 CFR Part
50 will not be affected by the proposals in the petition, we take exception to
the petition, as discussed in the attachment. In addition, we are concerned
that the proposed rule changes could indirectly influence our future financial
resources in certain cases.

Licensees who wish to adopt current rules should be allowed that decision.
The decision by the NRC to not allow certain licensees to adopt rules that are
available to other licensees was not based upon strong technical information.
The Regulatory Analysis provides such reasons for exempting utilities to
participate as: higher decommissioning costs, alter balance of costs, and
different financial characteristics. These reasons do not indicate a
technical basis for the exemption, especially when the utilities analyzed
were able to comply with self-assurance requirements in the \$200 million
category. The NRC should provide a much stronger rationale for exempting
utilities the option of self-assurance or allow them to determine if they
elect the self-assurance option.

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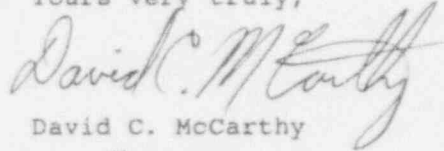
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Further comments are included in the attachment. If more information is needed, please contact Mr. Fred Emerson at (919) 546-7573.

Yours very truly,

A handwritten signature in cursive script, reading "David C. McCarthy".

David C. McCarthy
Manager
Nuclear Licensing Section

JHH/jbw

Attachment

cc: Mr. S. D. Ebnetter
Mr. L. W. Garner
Mr. N. B. Le
Mr. P. D. Milano
Ms. B. L. Mozafari
Mr. R. L. Prevatte
Mr. J. E. Tedrow

GENERAL COMMENTS

Though the petition does not directly affect 10 CFR Part 50 licensees, such licensees could be impacted by the inability of other licensees to decommission their facilities. Regulations must assure that facilities are properly decommissioned by the company operating the facility, and that the burden of decommissioning costs does not fall on other members of the nuclear industry or other independent parties. It is possible that such a burden could result when a facility is taken over by another company (foreign or domestic), or a company determines to discontinue operations for financial reasons.

SPECIFIC PETITION COMMENTS

1. "The petitioners proposed that electric utility reactor licensees under 10 CFR Part 50 not be affected by the proposals in the petition."

The NRC's response was that utilities already are permitted a cost-reducing financial assurance mechanism through a ternal sinking funds.

Carolina Power & Light Company takes exception to this proposal. Electric utility reactor licensees should be allowed to select the same decommissioning options as those afforded other companies within the nuclear industry. Utilities should be allowed to determine the most effective and efficient process to assure that decommissioning funds are available. Electric utility companies that can comply with the requirements in the Code of Federal Regulations and select a decommissioning option should be allowed to adopt that option. In addition, utilities would share in saving the minimum \$600,000, third-party cost, annually (as specified in the Regulatory Analysis) if they were allowed to self-guarantee. Consideration should be given to allowing similar-sized business entities in the same industry the same choice.

2. "The self-guarantee would be available only for an applicant or licensee having no parent company holding majority control of its voting stock."

Carolina Power & Light Company agrees with this requirement and that it should be included in the regulation. This requirement will help to guarantee the independence needed to make operating and other business decisions that are influenced by the unique requirements of the nuclear industry.

3. "Self-guarantee should not be allowed because of the potential for takeover and breakup of large companies."

The NRC believes the requirements for annual recertification, combined with timely bond rating, will maintain the level of financial assurance of the self-guarantee.

Federal Register, page 4100, January 13, 1993, "Timeliness in Decommissioning of Materials Facilities," background section states:

"If decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices at the inactive facility or the inactive portion of the operating facility may become lax as key personnel relocate and management interests wane. In addition, bankruptcy, corporate takeover, or other unforeseen changes in the company's financial status may complicate and perhaps further delay decommissioning."

Carolina Power & Light Company believes that regulations should take this scenario into consideration. The NRC has little recourse, after the fact, if a licensee shuts down, goes out of business, and does not volunteer to perform proper decommissioning activities. Companies are required to provide an annual submittal of financial stability; however, there is no stated process the NRC must complete to assure that these submittals are reviewed and, as necessary, acted upon. The self-guarantee is a promise by the company to provide the funds needed to complete decommissioning; the proposed rule allows that no monies will be required to be put aside. This promise to carry out the necessary financial activities when needed, in effect, is the guarantee for decommissioning that the NRC is relying upon for a clean site.

4. "The Commission is especially interested in public comment on this alternative financial criteria--the criteria in this proposed rule without the \$1 billion tangible net worth requirement."

Carolina Power & Light Company believes that, if the other criteria are maintained (tangible net worth at least 10 times the total current decommissioning cost estimate; assets located in the United States amounting to at least 90 percent of total assets or 10 times the total decommissioning costs; and a current rating for its most recent bond issue of AAA, AA, or A), the \$1 billion tangible net worth requirement should not be necessary.

SPECIFIC REGULATORY ANALYSIS COMMENTS

1. The analysis introduction background section states:

"The U.S. Nuclear Regulatory Commission (NRC) has accepted a petition to amend the current regulations establishing general requirements for decommissioning licensee facilities to allow certain NRC non-electric utility reactor licensees to self-guarantee decommissioning funding costs"

The executive summary of the analysis states:

"The petition argues, specifically, that self-guarantees provided by NRC materials licensees under 10 CFR Parts 30, 40, 70, and 72 who can pass the financial test proposed in the Petition"

Carolina Power & Light Company takes exception to electric utility companies being excluded. Electric utility reactor licensees should be allowed to select the same decommissioning options as those afforded other companies within the nuclear industry. Utilities should be allowed to determine the most effective and efficient process to assure that decommissioning funds are available. Electric utility companies that can comply with the requirements in the Code of Federal Regulations and select a decommissioning option should be allowed to adopt that option.

2. The introduction, Section 3: Analysis of Options, subsection 3.1: Methodology, Assurance Risk states:

"In the case of self-guarantees, the grantor is not required to set aside funds or obtain a third-party guarantee if it can demonstrate by means of a financial test that its financial resources are sufficient to pay the assured costs whenever those costs come due. Thus, for self-guarantees, the assurance risk equals the possibility that the licensee will be unable to meet the required obligations. In other words, the assurance provided by a self-guarantee is exposed to the risk that a decline in the financial condition of the self-guarantor will not be identified in time so that a prepayment or third-party financial assurance mechanism can be obtained to replace the self-guarantee."

Carolina Power & Light Company reviewed the analysis for this scenario and noted that, with the conditions to qualify for self-guarantee being met, there was little possibility of financial default. The results of this section of the analysis further strengthen justification for allowing electric utilities to consider the option of self-guarantee.

3. Section 5: "Implications for Other NRC Regulatory Programs" states:

"Currently self-guarantees are not allowed in NRC's financial assurance programs for low-level radioactive waste disposal facilities, uranium recovery facilities or for power reactors. While much of the analysis behind the proposed self-guarantee rulemaking may be generally applicable to these other programs, licensees in these programs may also be significantly different from materials licensees in at least three ways:

- (1) . . . decommissioning costs may be higher . . .
- (2) . . . the number of licensees is likely to be smaller and could alter the balance between public and private costs . . .
- (3) . . . different financial characteristics . . .

Because the present analysis, for the reasons stated above, may not fully apply to NRC's other financial assurance programs, NRC is not proposing a self-guarantee option for these programs at the present time."

In reviewing the analysis, CP&L noted that although utilities were exempt from being allowed to use the self-assurance options, 50 utilities were selected to be analyzed as stated below:

The Estimated Availability of Proposed Self-Guarantee section states:

"Data on almost 250 licensees under 10 CFR Parts 30, 40, 70, and 72 were included in the database, along with data on almost 50 licensees under 10 CFR Part 50."

Section 4.1: Development of Financial Database includes:

at Step 4: Add firm names and financial data for NRC licensees under 10 CFR Part 50. Step 4 criteria included the sample of firms so that "data for these firms can be analyzed separately in the database to allow comparisons with licensees under Parts 30, 40 70, and 72. This process added 46 firms to the database.

at Step 8: Enter data on decommissioning costs. Step 8 included " . . . a decommissioning cost of twenty million dollars was included because it is the highest cost estimate in any submission reviewed to date. The last two possibilities \$50,000,000 and \$200,000,000, were used to account for 10 CFR Part 50 licensees, who may face higher obligations than licensees under Parts 30, 40 ,70, and 72."

It was further noted by CP&L that, in reviewing the exhibits or tables using varying criteria for comparisons, if a licensee has both a Part 50 license and a Part 30, 40, 70, and 72 license, the licensee is listed under the Part 30, 40, 70, and 72 category. This resulted in only 37 of the 50 selected utilities being analyzed as Part 50 licensees, with the other 13 utilities being combined with Part 30, 40, 70, and 72 analysis.

IN SUMMARY

The Regulatory Analysis exhibits or tables used in the varying decommissioning cost analyses indicated that a substantial number of utilities, that had been selected, could meet the specified criterion, even at the \$200 million level.

The analysis performed and results available indicate the electric utilities analyzed can meet several decommissioning options, especially the self-guarantee option. Therefore, the NRC should amend the petition to allow electric utilities the option of selecting self-guarantee of decommissioning funds.