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April 22, 2020

via email

Ted Smith, Reactor Decommissioning Branch
Reactor Decommissioning Financial Assurance Working Group Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Reactor Decommissioning Financial Assurance Working Group Draft Report -
Comments by NYS Department of Public Service

Dear Mr. Smith:

Following up on last week's public webinar hosted by NRC staff on April 14 concerning the recently-released draft Decommissioning Fund Assurance report and in response to the invitation for comments from States and other stakeholders, attached please find written comments and questions from the NYS Department of Public Service concerning the draft report.

Respectfully submitted,

s/ John Sipos

John Sipos
Office of General Counsel

s/ Bridget Frymire

Bridget Frymire
Office of Resilience & Emergency Preparedness

Copies to:

Annette Vietti-Cook, NRC Secretary
Doug Tift, NRC Region 1

Enclosure:

1. NYS Department of Public Service Comments and Questions Regarding Draft Decommissioning Financial Assurance Report (April 22, 2020)

References:

1. Reactor Decommissioning Financial Assurance Working Group DRAFT Final Report 4/10/2020, ADAMS accession No. 20101H123 (date added and released April 10, 2020)

Nuclear Regulatory Commission Reactor Decommissioning
Financial Assurance Working Group Final Report (Draft) April 10, 2020
DPS Comments and Questions – April 22, 2020

Questions and Comments:

1. The last 3 years have seen bankruptcies involving companies that own nuclear power plants.
What action will NRC take if an owner of a decommissioning nuclear power plant goes bankrupt after cessation of reactor operations or in the midst of decommissioning and there is insufficient money in the decommissioning trust fund to complete decommissioning and site restoration?
 - a. In a bankruptcy situation, what action will NRC take to:
 - i. protect host communities to ensure that a thorough decommissioning proceeds in an expeditious manner?
 - ii. ensure that a bankrupt nuclear company does not discharge its decommissioning obligations and responsibilities in the bankruptcy process?
 - iii. protect the nuclear decommissioning trust fund monies from creditors in the bankruptcy process?
2. The Working Group's Draft Report discusses a "Spot Check" Program (Draft at 6-7). Regarding the "Spot Check" Financial Assurance Program mentioned for Operating Reactors, what financial metric does NRC measure the nuclear decommissioning trust monies against –
 - a. is the financial metric
 - i. the generic minimum financial number provided by NRC regulation, 10 C.F.R. §50.75, which contains a *pro forma* formula based on a reactor's rated output?
or
 - ii. a site-specific decommissioning estimate for a specific reactor site reflecting the specific operational history and radiological leaks at that specific site?
 - b. Are the "spot checks" discussed in the draft at 6-7 only applicable to operating reactors? Will spot checks be broadened to include reactor plants undergoing decommissioning? See also Draft Report at p 17.
 - c. The "spot check" program triggers in the draft (at 6-7) are listed as "licensee indicted or convicted of fraudulent financial activities," actual declaration of bankruptcy by licensee or parent, "significant decline in a licensee's trust fund balance" that would "have an adverse impact on decommissioning activities," or a "substantiated allegation" that a

licensee misrepresented decommissioning trust fund balances. In addition to this set of initiating criteria for a spot check, has NRC considered the addition of external events to initiate a spot check -- such as a decline in stock market or national economic metrics? Also, has NRC considered adding as an initiating criterion: increased decommissioning costs tied to historical operations or releases at a specific site?

- d. Will the “spot check” program ever subject licensees to financial stress test analyses outside of the bankruptcy context?
3. On page 7 of the Draft Report, it should identify which Part 50 licensees have declared bankruptcy in the past 20 years. Given that the Draft Report concerns the financial assurance of decommissioning trust funds for reactors and seeks to leverage the agency’s institutional knowledge, the report should identify the bankruptcy events that NRC has encountered.
4. Also, regarding the same page of the Draft Report, is it correct that NRC Staff did not conduct a “spot check” on the decommissioning trust funds in those bankruptcy cases?
5. What were the “two instances of licensee bankruptcy occurring prior [to] decommissioning” that the Working Group considered as referenced on page 12 of the Draft Report?
 - a. What actions did NRC take to protect the Decommissioning Trust Funds in those cases?
6. On page 12, the Draft Report states “...a bankruptcy filing does not relieve a licensee of its obligation to comply with NRC regulations. Licensees must continue to comply with the NRC’s decommissioning financial assurance requirements, including the requirement to make up shortfalls.” What action has NRC taken to ensure that bankrupt entities comply with the NRC’s decommissioning financial assurance requirements, including the requirement to make up shortfalls?
7. In the Draft Report on page 12, the draft states: “the [Working Group] determined that, because the regulations require regular recalculations of decommissioning costs based on current information, any shortfall would be identified far enough in advance that actions could be taken to cover the shortfall, such as by allowing additional fund growth or by revoking any exemption previously granted by the NRC for the licensee to use decommissioning funds for spent fuel management.” What specific analysis did the Working Group perform to arrive at this conclusion?
 - a. Separately, what does the phrase “far enough in advance” mean as used in the Draft Report on page 12 (in “DTF Shortfall” discussion)?

- b. Furthermore, still on page 12 (paragraph 2) of the Draft Report, what “additional actions” could NRC take *in addition to* delaying decommissioning or undoing a previously granted exemption? Continuing on with the same paragraph, what other regulatory action is available to require a licensee “to otherwise ensure adequate funds are available”?
 - i. Has NRC ever revoked an exemption previously granted by the NRC for a licensee to use decommissioning funds for spent fuel management?
- 8. Regarding page 12 in the Draft Report (in “PSDAR Update Triggers” discussion), what factors will the Working Group consider as relevant to what the Draft Report describes as “making significance determinations on decommissioning cost increases.” This issue also is discussed on page 19.
- 9. To leverage the agency’s historical experience and provide transparency, the Report should provide financial detail on completed U.S. decommissioning projects. For each completed project, identify if the project was finished under the projected NRC generic formula amount (10 C.F. R. §50.75).
- 10. The report should identify what regulatory tools are available to NRC to compel a limited liability corporation (LLC) to add in additional money to a decommissioning trust fund?
- 11. In the specific context of decommissioning funding assurance, what actions have the NRC Commissioners and Staff taken given the financial consequences flowing from the COVID-19 situation and the impact on decommissioning trust fund monies?
- 12. Page 4 of the Draft Report states: “For operating reactors, *biennial* DFS reports are required to include ...” Page 9 of the Draft Report also refers to biennial reports and obligations. The NRC staff recommended in the new Decommissioning rulemaking to make these reports triennial, correct? If this is the case, then should not Staff’s proposal to reduce the reporting frequency and oversight be noted in the Report.