

1. Real Rate of Return:

Pgs. 5-6 of the draft report cite 10 CFR 50.82(a)(8)(vi) that says, “earnings on such funds [are] calculated at not greater than a 2 percent real rate of return.” Real Rate of Return is usually defined as “the annual percentage return realized on an investment.” We have not been able to find any NRC definition.

Question: Is the “real rate of return” as used in the CFR and by the NRC in reviewing a PSDAR, Decommissioning Cost Estimate (DCE) or Request for Exemption the pre-tax annual percentage return or the post-tax percentage return?

2. Increases in Decommissioning Costs:

Pp 11-12 of the draft report say that “Stakeholders expressed concerns about cost estimates incorporating future costs as part of the cost estimates,” and that “The WG determined that future costs are already considered as part of the current decommissioning financial assurance process.”

PSDARs and DCEs are typically stated in current dollars. Inflation is inevitable, which means that the value of the current dollar will decrease over time.

The NRC’s Questions and Answers on Decommissioning Financial Assurance (ML1119/ML111950031 specifically state that decommissioning costs will increase at a rate higher than the rate of inflation, and that over a period of only 20 years (40 years less than the 60 year period allowed for decommissioning) there will be 2.5 to 5.6 times increase in costs, i.e., *the annual increase in costs will be 5% to 9%:*

*The NRC formulas represent the cost to decommission today, not in the future. Due to rising costs, the future value of decommissioning will be much larger than the NRC formula calculated today. For example, using the range of cost escalation rates based on NUREG - 1307, the increase in cost over a 20-year license renewal period would range from 2.5 to 5.6 times today’s estimated cost, not counting costs that are not included in the formula, such as soil contamination. The rates of increase in decommissioning cost are higher than general inflation.*

Question: In reviewing a PSDAR, DCE, or Request for Exemption, how does the NRC take inflation into account in determining whether there is financial assurance? In particular, do the NRC reviews consider the NRC’s statement quoted above, and exactly how do NRC reviews take into account the NRC’s admission that the rate of increase in decommissioning costs will be higher than general inflation?

### 3. Ability of an LLC licensee to provide needed funds.

The draft says that “The WG determined that the NRC’s regulations already require all licensees, including limited liability companies, to cover any identified shortfalls.’

We recognize that, as said at page 12 of the draft, according to NRC regulations “a bankruptcy filing does not relieve a licensee of its obligation to comply with NRC regulations” and that “Licensees must continue to comply with the NRC’s decommissioning financial assurance requirements, including the requirement to make up shortfalls.”

10 CFR 40.36(g) and 72.30(g) require a licensee to “replenish” a decommissioning fund if the amount in the fund is insufficient.

However, and as the NRC noted in connection with the draft report, it has become common for a reactor to be sold, and its licensees to be transferred, to new companies. In the typical situation, there will be two new licensees, both of which are limited liability companies and neither of which has any significant assets other than the decommissioning fund. Both of these licensees are usually directly or indirectly owned by some parent company that is not a licensee and that, unlike its limited liability subsidiaries, may have significant assets.

Some months ago, Mr. Watson told a meeting in Plymouth that the NRC had no legal ability to force a parent company that was not a licensee to cover a licensee shortfall.

#### Questions:

- (a) Please explain what legal authority, if any, the NRC has to require a parent company, or any other entity that is not a licensee, to “make up shortfalls” if a licensee that owns the decommissioning trust fund is a limited liability company and becomes bankrupt or otherwise clearly does not itself have the funds to complete decommissioning of a reactor.
- (b) Has the NRC ever required a parent company or non-licensee to “make up shortfalls?” If so, please identify the parent company or non-licensee, describe the circumstances and the steps taken by the NRC, and the extent to which the NRC’s steps were effective in obtaining sufficient funds to complete decommissioning.
- (c) With respect to a licensee that is a limited liability corporation, what steps has the NRC taken in the past to enforce the requirements in 10 CFR 40.36(g) and 72.30(g) that such a licensee “replenish” a decommissioning fund if the amount in the fund is insufficient? In other words, if a limited liability licensee does not have enough money, how has the NRC managed to obtain blood from a stone? As a practical matter, isn’t a regulation requiring a limited liability corporation licensee to “replenish” its decommissioning fund essentially meaningless?
- (d) If a limited liability corporation licensee is a “merchant plant,” whom does the NRC expect to pay any decommissioning costs that the licensee cannot?

#### 4. Exemptions:

The draft report says:

“If, at any point, the NRC’s prior determination that the DTF was sufficient to cover both radiological decommissioning and spent fuel management is challenged, then the NRC may revoke the exemption, or the licensee would have to otherwise ensure adequate funds are available.”

#### Question:

- (a) How does the NRC expect a limited liability licensee whose only significant asset is what has proved to be an insufficient DTF supposed “to otherwise ensure adequate funds are available?”
- (b) Has the NRC ever revoked an exemption because its prior determination that the DTF was sufficient was challenged? If so, please describe the circumstances and instances in which it has done so.
- (c) Are there any circumstances in which the “NRC’s prior determination that the DTF was sufficient to cover both radiological decommissioning and spent fuel management [was] challenged,” and the Licensee “otherwise ensure[d] adequate funds are available?” If so, please describe the circumstances and what the licensee did to “otherwise ensure adequate funds are available.”

#### 5.The Sufficiency of the Formula Amount

The NRC’s Questions and Answers on Decommissioning Financial Assurance (ML1119/ML111950031) say

The amount listed as the prescribed amount in 10 CFR 50.75 does not represent the actual cost of decommissioning for specific reactors. It is a reference level established to assure that licensees demonstrate adequate financial responsibility that the bulk of the funds necessary for a safe decommissioning are being considered and planned for early in facility life. Setting aside the bulk of the funds during the life of the facility provides adequate assurance that the facility would not become a risk to public health and safety when it is decommissioned. (53 FR 24018, 24030)

Question: Has the cost of decommissioning any commercial reactor ever been less than the amount prescribed in 10 CFR 50.75? If so, what reactors(s), and during what period of time was the reactor decommissioned.