

Background

On December 24, 2002, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** (67 FR 78332) a final rule entitled "Decommissioning Trust Provisions," which amended the NRC's regulations relating to decommissioning trust provisions for nuclear power plant licensees. The rule required licensees that are no longer rate-regulated or who no longer have access to a non-bypassable charge for decommissioning to have decommissioning trust agreements in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. The rule has an effective date of December 24, 2003.

After publication of the final rule, the Nuclear Energy Institute (NEI) suggested that an administrative rulemaking be undertaken to correct what it perceived to be administrative errors in the rule. The NRC agrees with NEI's requested changes, but because NRC considers this action noncontroversial and routine, the NRC is using the direct final rule procedure for this rule.

NEI's Proposed Changes

In a July 1, 2003, letter to the Director of the NRC's Office of Nuclear Reactor Regulation (NRR), NEI identified "four important instances" in which "administrative errors involving errors or omissions in drafting, * * * if uncorrected * * * could affect efficient implementation of the new rule." The four instances identified by NEI were (1) notification requirement for administrative expenses, (2) effective date of the new rule, (3) preserving the option to retain existing license conditions, and (4) investment prohibition.

Notification Requirement for Administrative Expenses

NEI stated that NRC failed to exclude ordinary administrative expenses from the new rule's requirement that the fund withdrawals require prior NRC notification. Further, NEI stated that the NRC did not intend, supported by the language in its Statement of Considerations, for licensees to notify the NRC when paying ordinary trust administrative expenses. NEI asserted that " * * * [T]he above-cited provisions of the final rule failed to associate administrative expenses with an exclusion from the notice requirement." In fact, the final rule states in § 50.75(h)(1)(iv) " * * * Disbursements, or payments from the

trust, escrow account, Government fund, or other account used to segregate and manage the funds, *other than for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed.* * * * (emphasis added.)

In order to eliminate any further confusion regarding the present rule language, the NRC is revising the rule language to essentially the language NEI proposed. That is, 10 CFR 50.75(h)(1)(iv) will read "Except for withdrawals being made under 10 CFR 50.82(a)(8) *or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust,* * * * (emphasis added.)

Further, this rulemaking is also revising the first sentence of 10 CFR 50.75(h)(2) to read "Licensees that are 'electric utilities' under § 50.2 that use prepayment or an external sinking fund to provide financial assurance, shall *include a provision* in the terms of the trust, escrow account, Government fund, or other account used to segregate and manage funds that except for withdrawals being made under 10 CFR 50.82(a)(8) *or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made, from the trust,* * * * (emphasis added.)

Effective Date of the New Rule

The second point NEI raised related to the effective date of the new rule. NEI's position is that certain changes made by the rule, other than those changes in 10 CFR 50.75(h)(1)–(3), should be made immediately effective, rather than on December 24, 2003, as now called for in the rule. The NRC believes that there is no substantive reason to change the effective date of the rule because the Commission has already determined that the December 24, 2003, effective date is appropriate.

Preserving the Option To Retain Existing License Conditions

NEI's third point related to licensees being able to retain their existing license conditions. NEI stated that the rule language does not reflect the intent of the Commission that individual licensees should have the option of retaining their existing license conditions. The NRC agrees with the comment and amends the rule by adding the following as a new section, 10 CFR 50.75(h)(5), to become effective on December 24, 2003:

The provisions of paragraphs (h)(1) through (h)(3) do not apply to any licensee that as of December 24, 2003, was subject to existing license conditions relating to the terms and conditions of decommissioning trust agreements, so long as the licensee does not elect to amend those license conditions. If a licensee with existing license conditions relating to decommissioning trust agreements elects to amend the conditions, the license amendment shall be in accordance with the provisions of paragraph (h) of this section.

Investment Prohibition

Lastly, NEI discussed investment prohibition requirements of the rule. NEI stated that the rule failed "to include a general prohibition against investments in nuclear plant owners, although such a prohibition was intended * * *," and proposed the following change in § 50.75(h)(1)(i)(A) which, as revised, would read: " * * * is prohibited from investing the funds in securities or other obligations of the licensee or *any* other owner or operator of *any* power reactor * * * (emphasis added.)" The NRC agrees and is making the proposed change (with the modification "any *nuclear* power reactor" to be consistent with the rest of the rule) through this direct final rule effort.

Miscellaneous NRC Corrections

The NRC is clarifying the applicability of the *de minimis* limitation contained in the investment prohibition, so that the *de minimis* proviso will now read " * * * and provided further that no more than 10 percent of trust assets may be indirectly invested in securities of any entity owning or operating one or more nuclear power plants." In addition, the NRC is making an editorial change to clarify that the securities of operators, as well as owners, of nuclear power plants are subject to the investment provisions in their entirety. Finally, the NRC is correcting minor typographical errors in paragraphs (e)(1)(i) and (e)(1)(ii) so that the term "permanent termination of operations" is used in full where the term "permanent termination" now