



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 17, 2006

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0065

TITLE: OFFICE OF THE INSPECTOR GENERAL
RECOMMENDATIONS ON DECOMMISSIONING FUNDING
ASSURANCE

The Commission (with Chairman Diaz and Commissioners McGaffigan, Merrifield, and Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 17, 2006. Commissioner Jaczko approved in part and disapproved in part.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook".

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-06-0065

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	4/7/06
COMR. McGAFFIGAN	X				X	3/27/06
COMR. MERRIFIELD	X				X	3/27/06
COMR. JACZKO	X	X			X	4/11/06
COMR. LYONS	X				X	4/7/06

COMMENT RESOLUTION

In their vote sheets, Chairman Diaz and Commissioners McGaffigan, Merrifield, and Lyons approved the subject paper and provided some additional comments. Commissioner Jaczko approved in part and disapproved in part. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on May 17, 2006.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-06-0065 - OFFICE OF THE INSPECTOR
GENERAL RECOMMENDATIONS ON
DECOMMISSIONING FUNDING ASSURANCE**

Approved xx ^{w/comments} Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:

See attached comments.

[Handwritten Signature]
SIGNATURE

AP 7, 06
DATE

Entered on "STARS" Yes No _____

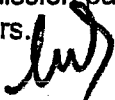
Chairman Diaz's Comments on SECY-06-0065

I agree with the staff that the existing process for verifying decommissioning trust fund balances and ensuring prudent investment practices for these funds are adequate. I disagree with the statements in audit report OIG-06-A-07 that \$23.3 billion of decommissioning funds are at risk.

As noted by the staff, the NRC relies on the requirements of 10 CFR 50.9 to ensure complete and accurate information is submitted not only with respect to biennial decommissioning funding status reports, but also concerning a wide range of information supplied by licensees upon which public health and safety determinations are made. Licensees are required by 10 CFR 50.75 to periodically submit decommissioning fund status reports and the NRC staff conducts a review of these reports to verify that funding levels are adequate. The existing process, which includes civil and criminal penalties for reporting inaccurate information and holds licensees accountable for the accuracy of the information related to their licensed activities, provides ample incentive for licensees to accurately report on the status of their trust funds.

Regarding OIG's recommendation on investment restrictions, the Commission specifically considered whether to impose investment restrictions on the decommissioning trust funds for all licensees, including licensees regulated by State PUCs and FERC, in response to public comments on the 2002 rulemaking on trust fund provisions (68 FR 19711). As highlighted by the public comments on the proposed rule, imposition of such requirements could result in unnecessary duplication of regulatory oversight and the potential use of different standards by different regulatory organizations. The Commission concluded that doing so "could be burdensome for licensees still regulated by State PUCs and FERC, with no significant improvement in public health and safety;" and decided to only impose investment restrictions on licensees not regulated by State PUCs or FERC. I do not believe that the discussion in the OIG report on FERC and State oversight of investment activities is sufficient to conclude that the decommissioning trust funds are at risk or that the Commission's 2002 decision was in error. Furthermore, as reported by the FDIC, as of August 2004, 48 States and the District of Columbia have adopted the Uniform Prudent Investor Act (UPIA) or a quasi-UIA. This provides added assurance of appropriate oversight of the investment of decommissioning funds.

Although I agree with the staff's recommendations, I am interested in the potential issues raised by the OIG report regarding the level of oversight provided by FERC and State PUCs. I believe the staff should provide to the Commission a more detailed discussion of decommissioning trust fund investment oversight activities conducted by FERC, State PUCs, and other organizations, as appropriate. The staff should provide this discussion no later than the next Commission paper summarizing decommissioning funding status reports for nuclear power reactors.



NOTATION VOTE
RESPONSE SHEET

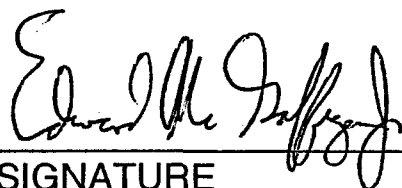
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-06-0065 - OFFICE OF THE INSPECTOR
GENERAL RECOMMENDATIONS ON
DECOMMISSIONING FUNDING ASSURANCE**

Approved ^{w/} comments Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE

March 27, 2006

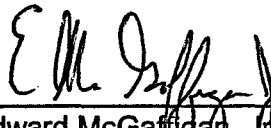
DATE

Entered on "STARS" Yes No _____

Commissioner McGaffigan's Comments on SECY-06-0065

I approve of the staff's recommendation that no changes should be made with regard to verification of trust balances by trustees or requirements for specific investment restrictions. I also applaud the staff's forceful response to this audit report, embodied in Bill Kane's memorandum to Stephen Dingbaum, dated March 23, 2006. I strongly believe that it would be an egregious waste of resources to entertain these recommendations that lack any credible support. The OIG report was out-of-date at the time of issuance, arriving at erroneous conclusions based on incomplete data. I fundamentally disagree with the basic premise underlying these recommendations that \$23.3 billion of decommissioning funds are at risk. Since 2002 the number of license renewals has increased from 10 to 39 with 12 additional plants under review. Close to \$31 billion of the required \$41 billion under NRC's current decommissioning funding formula is available at this time (approximately \$300 million per plant). With 76% of the necessary funds available, and license renewal likely for the vast majority of plants, the industry is well ahead of meeting its decommissioning funding goals.

With regard to verification of decommissioning fund balances by trustees, I agree with the staff that no change is necessary, given that our regulations already require that information submitted to the Commission must be complete and accurate in all material respects, carrying with it criminal sanctions for willful violations. I am unaware of any previous cases in which licensees filed false trust fund balance information. I also strongly agree that the NRC is not staffed with the requisite expertise, nor should it be our role to develop and continually reassess investment restrictions. Given this and other facts, such as state legislation adopting the Uniform Prudent Investor Act and the NRC's traditional role in not becoming involved in the financial affairs of its licensees, I can find absolutely no reason to support either of the OIG recommendations. I firmly believe that it would be premature to waste our time and resources on these funding assurance issues. In the future (circa 2011) when more cost return information is available, NRR should review the formula used for decommissioning funding requirements and adjust it, if necessary.


Edward McGaffigan, Jr. 3/27/06

(Date)

NOTATION VOTE

RESPONSE SHEET

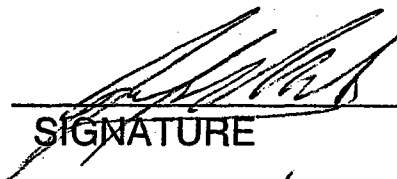
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-06-0065 - OFFICE OF THE INSPECTOR
GENERAL RECOMMENDATIONS ON
DECOMMISSIONING FUNDING ASSURANCE**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.



SIGNATURE

2/27/06

DATE

Entered on "STARS" Yes No

Commissioner Merrifield's Comments on SECY-06-0065

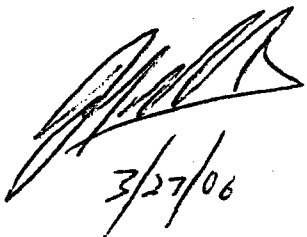
OIG Recommendations on Decommissioning Funding Assurance

I agree with the staff that there is no need to initiate rulemaking to require verification of decommissioning trust funds for power reactors, nor should the Commission require additional investment restrictions for these funds. The staff has done an excellent job of providing logical arguments to support their recommendations.

It is true that the NRC relies on the requirements of 10 CFR 50.9 to ensure that information submitted to the NRC is complete and accurate. This regulation not only applies to decommissioning trust fund balances, but to the wide spectrum of information the NRC uses on a daily basis to protect the public health and safety, when making decisions regarding nuclear power reactor operations. In addition, under the Atomic Energy Act, licensees are subject to criminal penalties for making a material false statement to the NRC, regardless of whether the statement is made under oath or affirmation. I believe the current regulations provide sufficient assurance that licensees will continue to accurately report the status of their decommissioning funds.

I also do not believe the NRC should impose further restrictions on decommissioning trust fund investments. As part of their responsibility to regulate public utilities, the public utility commissions (PUCs) in individual States, and the Federal Energy Regulatory Commission, actively monitor decommissioning fund investments of the vast majority of power reactor licensees. In 2003, the NRC took action to address the rest of the nuclear power plant licensees that are not public utilities by revising 10 CFR 50.75(h) to prohibit those licensees from investing decommissioning trust fund monies in any nuclear sector securities, and require that investments be made using the "prudent investor standard," as defined in FERC's regulations. I am confident that the revision to 10 CFR 50.75(h), which basically imposed the FERC investment restrictions on those licensees who are not electric utilities, in conjunction with the PUCs and FERC oversight of electric utilities will ensure that the decommissioning trust funds for all of our power reactor licensees are not subject to undue risk.

In summary, I believe that further rulemaking in the area of decommissioning trust funds is not warranted, and would not be a wise use of NRC rulemaking resources.




3/27/06

NOTATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: **SECY-06-0065 - OFFICE OF THE INSPECTOR
GENERAL RECOMMENDATIONS ON
DECOMMISSIONING FUNDING ASSURANCE**

Approved Disapproved Abstain
Not Participating

COMMENTS:
See attached comments.



SIGNATURE
4/11/06

DATE

Entered on "STARS" Yes No

**Commissioner Jaczko's Comments on SECY-06-0065
Office of the Inspector General Recommendations
on Decommissioning Funding Assurance**

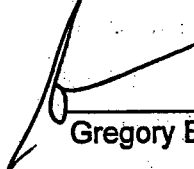
I approve in part and disapprove in part the staff recommendations regarding the Office of the Inspector General's (OIG) audit of the decommissioning funding program. The OIG recommended changes with regard to verification of decommissioning trust fund balances by trustees and restriction on investing these funds. The staff recommended that the Commission not accept the OIG proposed changes to this program.

I approve of the staff recommendation to not impose specific investment restrictions on decommissioning trust funds because I do not believe adequate information was provided by the OIG in its audit report. Currently Nuclear Regulatory Commission (NRC) regulations and the regulations of the Federal Energy Regulatory Commission (FERC) include some minimal investment restrictions on decommissioning trust funds utilizing the "prudent investor" standard.

I disapprove of the staff recommendation to not verify decommissioning trust balances partly because Public Utility- or Public Service Commissions of states where approximately 32 reactor units would require decommissioning had no specific statute or regulation addressing decommissioning. This fact contradicts the staff's argument that other regulatory authorities have oversight of licensees decommissioning funds. While the Commission promulgated new requirements in 10 CFR 50.75(h) for non-electric utilities in 2003 that are similar to FERC's regulations, they do not include a similar FERC provision for the Trustee or Investment Manager to keep records available for inspection or audit.

With approximately 39 reactor units having gained approval to extend their license for another 20 years, 12 more under NRC review, and the likelihood that the majority of the fleet will seek to have their licenses renewed, the Commission should consider verifying licensee trust balances at some periodic frequency. The Commission should not allow these trust funds to go unverified for 60 years only to find out around 2035, when decommissioning of some of these plants will start, that adequate funds may not exist and we did not inspect or audit fund balances. Although I do not fully agree with the OIG that the decommissioning trust funds are "at risk," reviewing the trust fund balances would be a prudent, preemptive action.

If the staff currently lacks expertise to conduct such inspections or audits the staff should request the needed resources from the Commission to acquire the necessary personnel or develop our own staff to do so.



Gregory B. Jaczko Date 4/1/06

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-06-0065 - OFFICE OF THE INSPECTOR
GENERAL RECOMMENDATIONS ON
DECOMMISSIONING FUNDING ASSURANCE**

Approved ^{with comments} Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:



SIGNATURE
4/7/06

DATE

Entered on "STARS" Yes No _____

Commissioner Lyons Comments on SECY-06-0065

I approve the staff's recommendation that the Commission take no action related to the verification of decommissioning fund balances from trustees and investment restrictions of those funds. The Office of the Inspector General (OIG) in the "Follow-up Audit of the Nuclear Regulatory Commission's Decommissioning Fund Program," (OIG-06-A-07) recommended that the staff seek direction from the Commission on whether to (1) require verification of decommissioning trust balances from trustees, and (2) require specific prudent investment restrictions for decommissioning trust funds. For the reasons set forth below, I believe that neither action is warranted. Further, I find it regrettable that the OIG's report contained sensationalistic language that misportrayed the status of decommissioning funds for nuclear power reactors.

With respect to the first OIG concern that decommissioning trust fund balances are not verified from a trustee, OIG states that the staff "merely relies" on licensee representations for the amount accumulated in the decommissioning trust funds. OIG-06-A-07 at 6. I find reliance on licensee representations to the amounts to be sufficient. The regulations at 10 CFR 50.9 provide that information submitted to the NRC is required to be complete and accurate in all material respects, and possible criminal penalties apply for false reporting. Further, the staff is aware of no previous case in which a licensee filed false trust fund balance information. Finally, I see no reason to institute a new regimen for checking decommissioning trust fund balances that is any different from reliance on 10 CFR 50.9 for accurate reporting of safety matters.


With respect to the second OIG concern that NRC's investment restrictions are limited in scope and do not specifically cover such things as investment in junk bonds or the percentage of funds that can be prudently invested in any one company or industry, I do not believe that changes to the staff's actions are warranted. There presently exist adequate limitations on investment approaches through the mechanisms outlined by the staff: new investment restrictions in 10 CFR 50.75(h) applicable to non-electric utility licensees require that investments be made in accordance with the "prudent investor standard" referred to in FERC regulations in the absence of applicable state or Federal investment standards. Public utility commissions and FERC actively monitor decommissioning funds as part of their rate regulatory responsibilities. In fact, OIG-06-A-07 reports that four of six states sampled had recent public utility commission action or a report on decommissioning.

In addition, since licensees report fund performance biennially, the staff has plenty of time to correct any developing problems. Further, there is no rationale for involving NRC in financial analyses of fund investments, and there is no need for NRC to institute any system of dual regulation on investment options.

Decommissioning funding is robust and on solid track. On March 31, 2006, the staff reported more recent data in SECY-06-0073 "Summary of Decommissioning Funding Status Reports for Nuclear Power Reactors." As of December 31, 2004, nuclear power reactor licensees collectively had on deposit approximately \$30.9 billion in external decommissioning trust fund accounts. This represents about 76 percent of the funds estimated in 2004 that will be needed at the time of decommissioning. The IG's report was based on older 2002 data in which licensees collectively had on deposit approximately "23.3 billion in trust funds, which represented about 61 percent of the funds estimated in 2002 that will be needed at the time of decommissioning. These figures show that in the past two years, funds available increased by \$7.6 billion, which exceeded decommissioning cost increases of \$2.45 billion by \$5.2 billion.

With the exception of one special case, the staff found that decommissioning funding assurance now equals or exceeds the latest available minimum decommissioning funding estimates. Based on the adequate limitations on investments strategies, biennial reporting, completeness and accuracy requirements in licensee statements, the longer period of time available due to license renewals to accumulate funds, and the most current data available on decommissioning funding, I do not consider that the status of decommissioning trust funds is in any way in jeopardy.

Finally, I conclude that the IG report contains a number of erroneous and/or inflammatory statements. For example, the IG report states repeatedly that "\$23.3 billion in decommissioning trust funds are at risk," it raises, without analysis, the spectacle of the Enron financial accounting scandal, and states that senior NRC executives "generally agreed" with the report's findings and recommendations.¹ This IG report does not well serve the Commission or the American people.


4/7/06

¹ To the contrary, the staff "does not agree with the OIG's recommendations that NRC should require verification of decommissioning trust fund balances from trustees, or require specific prudent investment restrictions for decommissioning trust funds." See Memorandum to Stephen D. Dingbaum, Assistant IG for Audits from William F. Kane DEDO, dated March 23, 2006. Neither does the staff believe the decommissioning trust funds are "at risk," or that there is an "increased vulnerability to decommissioning funding shortfalls."