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Kenneth Wade, Project Manager
Office of Nuclear Energy
U.S. Department of Energy
Forrestal Building
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Wade,

We were pleased to have the opportunity to participate in the public workshop and submit comments to assist the Department of Energy's decision making on the implementation of Section 638 of the Energy Policy Act of 2005. Dominion has reviewed and endorses the comments on Section 638 being submitted by the Nuclear Energy Institute (NEI). In addition, we would like to provide the attached specific comments and request for clarifications.

Thank you again for this opportunity to provide input to this process. We believe that the provisions of the Energy Policy Act of 2005 to provide loan guarantees and production tax credits when taken together with the regulatory risk protections in Section 638 represent vital incentives for new power nuclear plants.

Very truly yours,

Eugene S. Grecheck
Vice-President - Nuclear Support Services
Dominion

Enclosure

Comments on Implementation of Section 638,
Standby Support for Certain Nuclear Plant Delays
Energy Policy Act of 2005

- Eligibility

[Subsec. (b) (1)] Contract Authority

The language of the statute [Subsec. (d) (2) and (3)] sets the criteria for determining that advanced nuclear facilities qualify for the standby support as receipt of the Combined License (COL) and commencement of construction. This sets the qualifying time ~3 years after the submittal and after substantial investment in the project.

Issue: When will the Secretary enter into contracts? [Subpar. (b) (2) (C)]

This section needs clarification in the rules as to when the Secretary will enter into the contract. The language of the statute indicates this will occur after a facility has qualified as one of the six reactors to receive standby support. However, notwithstanding the time at which the Secretary plans to actually execute the contract, it would be helpful for the sponsors to see the contract as soon as possible to be able to evaluate its effect on risk allocation and the resulting impact on financing.

A preferable rule would provide the information to all parties at the time in the project planning process when it is needed for decision making. This could take the following form:

Set a deadline of the end of 2008 for interested parties to file an application for a COL and have it accepted by the Commission for review. Also by this date, the Sponsor will enter into a contract that defines the level of coverage, terms and conditions and premiums. The contract format would be standard for all potential sponsors with flexible coverage and premium options. The contract would be contingent on the Sponsor meeting the conditions of having received the COL, started construction, and paid any required initial premium. The Sponsor's place in the queue is then determined by the relative timing of meeting the statutory conditions. If a Sponsor fails to start construction within 4 to 5 years of the Commission's acceptance of the COL application, the contingent coverage could be forfeited and made available to another eligible Sponsor.

This methodology provides the necessary information to all parties on a timely basis and provides incentive to commit to the process.

Issue: Is the sponsor required to take its determined priority?

There should be rules for reviewing a sponsor's position in the queue. For instance, if a sponsor would otherwise be first in the queue, the sponsor should have the option of moving to the second tier of coverage if the sponsor so chooses, with the other sponsors moving up in line. This methodology gives precedence to the sponsors who first meet the criteria as intended by the statute, but permits the sponsors to evaluate the cost relative to the levels of coverage. If the previously suggested qualification process is followed, this issue would be resolved in the terms and conditions of the contingent contract.

Issue: How are the accounts funded?

With respect to “loan guarantee fees” and other payments, clarification is required for the source, nature, and timing of the payment. Dominion believes this should be fully funded by the government; however, the assumption is that there will be an assessment/fee for the Sponsor to enter into the contract. That being the case, Dominion prefers a “cost overrun” quantum that is fixed and known at the time of the Sponsor’s COL date that can be funded in equal installments during the course of construction. To the extent that funds are “subject to appropriation” the Sponsor may consider the Standby Support to be of limited utility due to the uncertainty of funding.

Based on internal analyses, the prospective Sponsor should have an option to select “cost overrun” protection in any increment of \$50 million up to the maximum level as allowed per the statute. The regulation should breakdown the coverage into components (litigation delay vs. ITAAC delay, financing cost coverage vs. power obligation differential cost coverage) and have each priced separately to allow the sponsor a choice of what best meets their needs.

If some Sponsor monetary participation is required, there should be provision to allow the Sponsor to recoup funds in the event that no draws are made on the account.

Issue: Standby Support Grant Account funding.

The language of (b) (C) (ii) appears to require that the funding of the Standby Support Grant Account be on a dollar for dollar basis to cover the costs of (d) (5) (B) from appropriations and Sponsor funds. This is in contrast to the funding of the Standby Support Account that employs the FCRA estimate of the subsidy loss/estimated risk of loss. With the uncertainty of appropriations it is likely that the Sponsor would be required to provide the majority of the funds for this account, making the provision unusable.

Covered Delays [(c) (1) (A)]

Issue: Rules are required for determining that a delay has occurred and a claim is warranted.

The time period starts with issuance of COL and commencement of construction. **[(d) (2) and (3)]**. Specifically, the focus is on compliance with schedules for the review and approval of inspections, tests, analyses, and acceptance criteria (ITAAC) and the conduct of any required preoperational hearings by the Commission. The ITAAC will be assessed throughout the construction phase of the project, with the majority of activity occurring near the end of the project.

What constitutes expected operation and when is it determined? How will it be revised for normal project schedule changes? The licensee could provide expected fuel load and full power operation control dates within a reasonable timeframe of receiving the COL. These control dates would be managed throughout the project to determine impacts of Commission actions that result in revision of the date. Variance in the control dates that are attributable to covered delays [(c) (1) (A) and (B)] shall be subject to claims under the contract. It should be recognized that the incentive to overcome any delays and attain full

power operation is in the Sponsor's best interest and will govern the use of due diligence to succeed.

Contested claims need to have a process for determining cause and fault of the delay. Dominion suggests that the Secretary of Energy provide the final decision in these cases.

The process for making claims needs to be provided. A related issue is whether the payment of claims would not start until the planned date of full power operation has passed, or could begin when it has become apparent that completion has been delayed by a covered event.

[(c) (2) (B)] Events within control of the sponsor need to be specified.

[(c) (2) (C)] Normal business risk needs to be specified. A definition such as "traditional exposures for which insurance is currently available on commercially reasonable terms and conditions" would be appropriate.

- Covered Costs

Issue: How will interest and principal be calculated? [(d) (5) (A)]

Interest should be defined as what would accrue on a day by day basis, as opposed to what is actually paid. Principal should be defined as the total outstanding principal balance at the expected date of full power operation divided by the number of days from that date to the day the last of the principal is paid off, based on loan contract terms. This allows for recovering the principal pro-rated on a daily basis.

Issue: How will incremental price of power be treated if the plant is selling part of its power into the local market instead of under long-term supply agreements? [(d) (5) (B)]

Clarification that the incremental difference between the fair market price of power purchased to meet "contractual supply arrangements" would include the price of power that would have been received in the appropriate regional market for all or the portion of the power that would have been sold into the local market (instead of being sold under long term contract) would have the applicable market price as the proxy for the incremental difference when determining the damages.

Issue: Calculation of fair market price and contractual price of power [(d) (5) (B)].

The fair market price of power is defined as the total of the real-time cost of capacity, energy, and ancillary payments the Sponsor would have to make to replace the capacity, energy, and ancillary services that would have been provided by the nuclear facility.

If the contractual price of power includes some type of capacity payment (\$/kw-month or kw-year) it will be converted to a \$/MWH rate and added to any contracted energy rate to obtain a total rate (\$/MWH). The expected generation for the delay period would be defined as the capacity of the nuclear facility times the number of hours of the delay times an expected capacity rate (1 – expected forced outage rate).

Issue: Interest accrual on claims not paid in a timely manner.

In the event that the Secretary does not pay claims in a timely manner, the amount of the claim should accrue interest. An example of an appropriate rate would be the LIBOR (London Inter-Bank Overnight Rate) or another market floating rate plus 400 basis points. The interest will be calculated monthly and added to the balance for compounding monthly.