

by 22.5 percent but provides for a rate adjustment in accordance with the procedures set forth in section 119(c)(1) of the Copyright Act.

On March 8, 2005, the Copyright Office received a letter from EchoStar Satellite L.L.C., DirecTV, Inc., Program Suppliers, and the Joint Sports Claimants requesting that the Office begin the process of setting the rates for the retransmission of digital broadcast signals by initiating a voluntary negotiation period so that rates for both digital and analog signals "will be in place before the July 31, 2005 deadline for satellite carriers to pay royalties for the first accounting period of 2005."<sup>2</sup> Letter at 2. The Office sees no reason not to grant this request. Accordingly, today's notice begins the process mandated by statute.

### Voluntary Negotiation Period

Section 119(c)(2) of the Copyright Act, 17 U.S.C., provides that "[t]he process and requirements for establishing the royalty fee payable . . . for the secondary transmission of the primary digital transmissions of network stations and superstations shall be the same" as that set forth in section 119(c)(1) for the amendment of the rates paid for the retransmission of analog signals. Section 119(c)(1) provides that "the Librarian of Congress shall cause to be published in the **Federal Register** [notice] of the initiation of the voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers" for the retransmission of digital broadcast signals. This notice initiates the voluntary negotiation period.

The statute does not specify how long the voluntary negotiation period is to last. However, the regulations governing CARP proceedings provide for a "30-day period for negotiation of a settlement" when adjusting rates under the cable, phonorecord and jukebox statutory licenses. 37 CFR 251.63(a). Since the rates will be determined under the current CARP system<sup>3</sup> should parties be unable to negotiate a

voluntary agreement or an objection to such agreement is raised, the Library sees no reason not to adopt the period set forth in § 251.63(a) here. Therefore, the voluntary negotiation period commences today, March 25, 2005, and concludes April 25, 2005.

If a voluntary agreement is reached by the end of the negotiation period, the parties can request that the Librarian publish the agreement for notice and comment in accordance with section 119(c)(1)(D)(ii)(II) and adopt the rates in the voluntary agreement if no objections are received from a party with a significant interest and an intention to participate in a CARP proceeding. 17 U.S.C. 119(c)(1)(D)(ii)(III). Voluntary agreements must be submitted no later than April 25, 2005. If no agreements are received by that time, the Library will proceed in accordance with the rules and regulations of 37 CFR part 251.

Dated: March 22, 2005

**David O. Carson,**

*General Counsel.*

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**BILLING CODE 1410-33-S**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-17]

### Notice of Issuance of Partial Conditional Exemption; Portland General Electric Company, Trojan Independent Spent Fuel Storage Facility

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of partial conditional exemption.

#### FOR FURTHER INFORMATION CONTACT:

Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-8500; fax number: (301) 415-8555; e-mail: [cmr1@nrc.gov](mailto:cmr1@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Portland General Electric Company (PGE) is the licensee and holder of License No. SNM-2509 for the Trojan Independent Spent Fuel Storage Facility (Trojan ISFSI). In addition, PGE holds License No. NPF-1, pursuant to 10 CFR part 50, for the Trojan Nuclear Plant. The licensee will complete decommissioning of the Trojan Nuclear Plant and intends to terminate its Part 50 license for the Trojan Nuclear Plant.

The Trojan ISFSI contains the spent fuel removed from the Trojan Nuclear Plant.

Currently, the licensee provides financial assurance for the Trojan ISFSI pursuant to 10 CFR 72.30(c)(5), which allows a part 50 license holder to use the financial assurance provisions of part 50 to provide financial assurance for an ISFSI. The licensee maintains an external sinking fund for decommissioning funds pursuant to 10 CFR 50.75(e). However, when its part 50 license is terminated, it will no longer meet the condition of 10 CFR 72.30(c)(5) that allows it to use its existing external sinking fund to provide financial assurance for its ISFSI.

On April 29, 2004, PGE filed a request for NRC approval of a partial exemption from the provision of 10 CFR 72.30(c)(5) that requires an ISFSI licensee to additionally hold a part 50 license in order to use an external sinking fund as the exclusive means of financial assurance for decommissioning costs of an ISFSI.

##### II. Requested Action

Pursuant to the requirements of 10 CFR 72.7, PGE requested a partial exemption from the financial assurance requirements of 10 CFR 72.30(c)(5). The exemption request was "partial" because it would apply only to the requirement that the ISFSI licensee also hold a Part 50 license to use an external sinking fund as its exclusive method of providing financial assurance for its ISFSI. The licensee will continue to provide financial assurance conforming to the requirements of 10 CFR 50.75(e) and (h), although it reserved the right to change to another method as provided in other sections of 10 CFR 72.30(c). The licensee pointed out that the wording of 10 CFR 72.30(c)(5) allowed an "electric utility" to use an external sinking fund as the exclusive method of providing financial assurance when its part 72 ISFSI license was first issued. However, the rule was amended effective on December 24, 2003, which resulted in the change of the condition from "electric utility" to "a part 50 licensee." PGE stated that it will remain an electric utility after the termination of its part 50 license, hence it will continue to meet the intent of the rule as originally issued.

##### III. Discussion

The Commission may grant a specific exemption to the financial assurance requirements of 10 CFR 72.30(c)(5) provided that the requirements of 10 CFR 72.7 are satisfied. The Commission determined that a partial exemption from 10 CFR 72.30(c)(5) meets the

<sup>2</sup> We note that the letter referenced Docket No. 2004-9 CARP SRA, which is the proceeding to adjust the rates for the retransmission of analog signals. As the parties state in their letter, "the analog rates and digital rates are distinct and separate." Letter at 1. We agree. Therefore, we have assigned a separate docket number to this proceeding.

<sup>3</sup> On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Act of 2004, Pub. L. 108-419, which phases out the CARP system and replaces it with three permanent Copyright Royalty Judges. However, SHVERA calls for satellite royalty rates to be determined "under chapter 8 as in effect on the day before the date of enactment of the Copyright Royalty and Distribution Act of 2004." 17 U.S.C. 119(c)(1)(F).

requirements of 10 CFR 72.7, as discussed below:

*Specific Exemption Is Authorized by Law*

Prior to December 24, 2003, any ISFSI licensee that met the definition of "electric utility" in 10 CFR 50.2 was eligible to use the financial assurance methods of 10 CFR 50.75(e) to provide financial assurance for its ISFSI. As a result, the NRC approved use of an external sinking fund conforming to the requirement of 10 CFR 50.75(e)(1)(ii)(A) as financial assurance for the Trojan ISFSI pursuant to 10 CFR 72.30(c)(5).

The amendment to 10 CFR 72.30(c)(5) that became effective December 24, 2003, was incidental to the primary changes in Part 50 issued at the same time with regard to reactor decommissioning trust funds. The amendment to 10 CFR 72.30(c)(5) was in response to a comment that suggested the change to maintain consistency between parts 72 and 50, but did not change the basis of the regulations.

The basis of 10 CFR 50.75(e)(1)(ii)(A) is that a licensee that recovers decommissioning costs through rates established through "cost of service" or similar rate-making authority may use an external sinking fund as its exclusive means of financial assurance. A licensee that is a public utility is presumed to meet that basis. Because PGE will remain a public utility after termination of its part 50 license, it will continue to meet the basis for allowing a part 72 licensee to provide financial assurance using the methods of part 50. Therefore, the partial exemption from part 72 is authorized by law.

*Specific Exemption Will Not Present an Undue Risk to the Public Health and Safety*

The specific exemption requested is administrative in nature. The exemption does not have any reasonable potential to (1) foreclose release of the Trojan ISFSI site for unrestricted use; (2) result in significant environmental impacts not previously reviewed; or (3) result in there no longer being reasonable assurance that adequate funds will be available for decommissioning. The exemption will allow use of a financial assurance method currently in use that has been approved by the NRC. Therefore, the partial exemption will not present an undue risk to the public health.

*Specific Exemption Will Not Endanger the Common Defense and Security*

The partial exemption is administrative in nature and does not involve information of activities that

could potentially impact the common defense and security of the United States. Therefore, partial exemption will not endanger the common defense and security.

*Specific Exemption Is Otherwise in the Public Interest*

PGE's 2003 Annual Financial Statement (Form 10-K, submitted to the U.S. Securities and Exchange Commission (SEC) on March 19, 2004) stated that PGE will collect \$14 million annually, until 2011, from its customers to pay for decommissioning. This includes funding for radiological and non-radiological decontamination as well as on-site spent nuclear fuel storage. Those collections will occur whether or not the exemption is granted. However, if the exemption is not granted, PGE will incur higher costs due to the expense of providing a second independent financial assurance instrument, which would lead to unnecessary additional costs. Therefore, the exemption is in the public interest.

*Financial Ability of PGE To Fund the ISFSI Decommissioning Cost*

The Trojan ISFSI decommissioning cost estimate was \$7.9 million in 1997. Adjusting for inflation to 2004 would increase the cost to about \$10 million. In order to assess the ability of PGE to finance that cost, the staff reviewed PGE's 2003 Form 10-K. The financial statements show that PGE possesses \$3.37 billion in assets and earns \$1.7 billion annually in revenues. The financial report stated that PGE maintained a strong financial position with stable cash flow, and will receive \$14 million per year through 2011 for decommissioning costs. The cost of decommissioning the Trojan ISFSI appears well within the licensee's financial ability.

At the time of filing its exemption request, PGE was a wholly owned subsidiary of Enron Corporation. The staff determined that Enron's bankruptcy will not adversely affect PGE's ability to fund decommissioning of its Trojan ISFSI. Although Enron filed for bankruptcy protection, PGE did not. Regulatory "ring-fencing" effectively insulated PGE and its customers from the effects of Enron's bankruptcy. (Ring fencing is a state public utility board's regulatory strategy that prevents a utility's assets from being pledged as security for a parent company's obligations.) PGE's Quarterly Report, Form 10-Q, submitted to the SEC on November 5, 2004, states on page 41:

PGE, as a separate corporation, owns or leases the assets used in its business and PGE's management, separate from Enron, is

responsible for PGE's day-to-day operations. PGE maintains its own cash management system and finances itself separately from Enron, on both a short- and long-term basis. Neither PGE nor Enron have guaranteed the obligations of the other and there are no loans between them. Under Oregon law and specific conditions imposed on Enron and PGE by the Oregon Public Utilities Commission (OPUC) in connection with Enron's acquisition of PGE in the merger of Enron and Portland General Corporation in 1997, Enron's access to PGE cash or utility assets (through dividends or otherwise) is limited.

Therefore, PGE's assets will be available to provide funding for decommissioning if it continues as an Enron subsidiary. However, Enron entered into an agreement with Oregon Electric Utility Company, LLC, to sell all issued and outstanding PGE stock to Oregon Electric. In the event the sale is consummated, the Enron bankruptcy will be of no further concern.

**IV. Conclusion**

The Commission determined that the specific exemption to the financial assurance requirements of 10 CFR 72.30(c)(5) is authorized by law and will not endanger life or property, or the common defense and security and is otherwise in the public interest.

In connection with the issuance of the exemption, an Environmental Assessment and Finding of No Significant Impact was noticed in the **Federal Register** on March 17, 2005 (70 FR 13052).

Therefore, the Commission grants a partial exemption from the requirement of 10 CFR 72.30(c)(5) that the licensee must hold a part 50 license in order to provide financial assurance using the methods of 10 CFR 50.75(e) and (h); however, the exemption is granted subject to the following two conditions:

1. The exemption shall not become effective until the licensee submits, within 30 days of the issuance of this grant of exemption, documentation adequate to demonstrate that funding for the Trojan ISFSI decommissioning has been approved for recovery in rates by a rate making authority; and

2. The exemption shall cease to be effective in the event that funds remaining to be placed into the Trojan ISFSI decommissioning external sinking fund are no longer approved for recovery in rates by a competent rate regulating authority.

This exemption is effective upon satisfaction of Condition 1 above, and shall cease being effective in the event Condition 2 above is triggered.

**FURTHER INFORMATION:** Supporting documentation, with respect to this exemption request, is available for

inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/ADAMS.html>. A copy of the PGE request for NRC approval of a partial exemption from the provision of 10 CFR 72.30(c)(5), dated April 29, 2004, can be found at this site using the Agencywide Documents Access and Management System (ADAMS) accession No. ML041260470. Any questions should be referred to Christopher M. Regan, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mailstop O 13D13, telephone (301) 415-8500, fax (301) 415-8555.

Dated at Rockville, Maryland this 17th day of March, 2005.

For the Nuclear Regulatory Commission.

**Christopher M. Regan,**

*Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 05-5901 Filed 3-24-05; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Notice of Availability of Interim Staff Guidance Documents For Fuel Cycle Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

#### FOR FURTHER INFORMATION CONTACT:

Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001. Telephone: (301) 415-5788; fax number: (301) 415-5370; e-mail: [wrs@nrc.gov](mailto:wrs@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Nuclear Regulatory Commission (NRC) is preparing and issuing Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety analyses, license applications or amendment requests or other related licensing activities for fuel cycle facilities under subpart H of 10 CFR part 70. The NRC is soliciting public comments on two ISG Draft documents (ISG-01 and -04) which will be considered in the final versions or subsequent revisions. ISG-03 has been issued and is provided for information.

##### II. Summary

The purpose of this notice is to provide the public an opportunity to review and comment on the Interim Staff Guidance documents for fuel cycle facilities. Draft Interim Staff Guidance-01, Version 02, provides guidance to NRC staff relative to methods for qualitative evaluation of likelihood in the context of a review of a license application or amendment request under 10 CFR part 70, subpart H. ISG-01, Version 02, has been generally revised based on NRC staff and public comments on the initial version. Interim Staff Guidance-03, Revision 0 has been approved and issued and provides guidance to NRC staff relative to relationships between 10 CFR part 70, subpart H, nuclear criticality safety performance requirements and the double contingency principle. Draft Interim Staff Guidance-04, Version 0 provides guidance to NRC staff relative to baseline design criteria for new facilities and new processes at existing facilities.

##### III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Interim staff guidance	ADAMS accession number
Interim Staff Guidance-01, Version 02.	ML050690286.
Interim Staff Guidance-03, Revision 0.	ML050690302.
Interim Staff Guidance-04, Version 0.	ML050690296.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions on ISG-01 and ISG-04 should be directed to the NRC contact listed below by April 25, 2005. Comments

received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001. Comments can also be submitted by telephone, fax, or e-mail which are as follows: Telephone: (301) 415-5788; fax number: (301) 415-5370; e-mail: [wrs@nrc.gov](mailto:wrs@nrc.gov).

Dated in Rockville, Maryland this 18th day of March, 2005.

For the Nuclear Regulatory Commission.

**David H. Tiktinsky,**

*Acting Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 05-5902 Filed 3-24-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 28, 2005:

An open meeting will be held on Tuesday, March 29, 2005, at 10 a.m. in Room 1C30 and closed meetings will be held on Tuesday, March 29, 2005, at 11 a.m. and Thursday, March 31, 2005, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, March 29, 2005, will be:

The Commission will hear oral argument on appeals by Robert W. Armstrong, III and