

## Department of Energy

## § 950.14

for any decrease in loan costs, resulting from the re-estimation conducted pursuant to FCRA.

### **§ 950.14 Standby Support Contract: Covered events, exclusions, covered delay and covered cost provisions.**

(a) *Covered events.* Subject to the exclusions set forth in paragraph (b) of this section, each Standby Support Contract shall include a provision setting forth the type of events that are covered events under the contract. The type of events shall include:

(1) The Commission's failure to review the sponsor's inspections, tests, analyses and acceptance criteria in accordance with the Commission's rules, guidance, audit procedures, or formal opinions, in the case where the Commission has in place any rules, guidance, audit procedures or formal opinions setting schedules for its review of inspections, tests, analyses, and acceptance criteria under a combined license or the sponsor's combined license;

(2) The Commission's failure to review the sponsor's inspections, tests, analyses, and acceptance criteria on the schedule for such review proposed by the sponsor, subject to the Department's review and approval of such schedule, including review of any informal guidance or opinion of the Commission that has been provided to the sponsor or the Department, in the case where the Commission has not provided any rules, guidance, audit procedures or formal Commission opinions setting schedules for review of inspections, tests, analyses and acceptance criteria under a combined license, or under the sponsor's combined license;

(3) The conduct of pre-operational Commission hearings, that are provided for in 10 CFR part 52, after issuance of the combined license; and

(4) Litigation in State, Federal, local, or tribal courts, including appeals of Commission decisions related to an application for a combined license to such courts, and excluding administrative litigation that occurs at the Commission related to the combined license.

(b) *Exclusions.* Each Standby Support Contract shall include a provision setting forth the exclusions from covered

costs under the contract, and for which any associated delay in the attainment of full power operations is not a covered delay. The exclusions are:

(1) The failure of the sponsor to take any action required by law, regulation, or ordinance, including but not limited to the following types of events:

(i) The sponsor's failure to comply with environmental laws or regulations such as those related to pollution abatement or human health and the environment;

(ii) The sponsor's re-performance of any inspections, tests, analyses or re-demonstration that acceptance criteria have been met due to Commission non-acceptance of the sponsor's submitted results of inspections, tests, analyses, and demonstration of acceptance criteria;

(iii) Delays attributable to the sponsor's actions to redress any deficiencies in inspections, tests, analyses or acceptance criteria as a result of a Commission disapproval of fuel loading; or

(2) Events within the control of the sponsor, including but not limited to delays attributable to the following types of events:

(i) Project planning and construction problems;

(ii) Labor-management disputes;

(iii) The sponsor's failure to perform inspections, tests, analyses and to demonstrate acceptance criteria are met or failure to inform the Commission of the successful completion of inspections, tests, analyses and demonstration of meeting acceptance criteria in accordance with its schedule; or

(iv) The lack of adequate funding for construction and testing of the advanced nuclear facility.

(3) Normal business risks, including but not limited to the following types of events:

(i) Delays attributable to force majeure events such as a strike or the failure of power or other utility services supplied to the location, or natural events such as severe weather, earthquake, landslide, mudslide, volcanic eruption, other earth movement, or flood;

(ii) Government action meaning the seizure or destruction of property by order of governmental authority;

(iii) War or military action;

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(iv) Acts or decisions, including the failure to act or decide, of any government body (excluding those acts or decisions or failure to act or decide by the Commission that are covered events);

(v) Supplier or subcontractor delays in performance;

(vi) Litigation, whether initiated by the sponsor or another party, that is not a covered event under paragraph (a) of this section; or

(vii) Failure to timely obtain regulatory permits or approvals that are not covered events under paragraph (a) of this section.

(c) *Covered delay.* Each Standby Support Contract shall include a provision for the payment of covered costs, in accordance with the procedures in subpart C of this part for the payment of covered costs, if a covered event(s) is determined to be the cause of delay in attainment of full power operation, provided that:

(1) Under Standby Support Contracts for the subsequent four reactors, covered delay may occur only after the initial 180-day period of delay, and

(2) The sponsor has used due diligence to mitigate, shorten, and end, the covered delay and associated costs covered by the Standby Support Contract.

(d) *Covered costs.* Each Standby Support Contract shall include a provision to specify the type of costs for which the Department shall provide payment to a sponsor for covered delay in accordance with the procedures set forth in subparts C and D of this part. The types of costs shall be limited to either or both, dependent upon the terms of the contract:

(1) The principal or interest on which the loan costs for the Program Account was calculated; and

(2) The incremental costs on which funding for the Grant Account was calculated.

(e) *ITAAC Schedule.* Each Standby Support Contract shall provide for adjustments to the ITAAC review schedule when the parties deem necessary, in the case where the Commission has not provided any rules, guidance, audit procedures or formal Commission opinions setting schedules for review of inspections, tests, analyses and accept-

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ance criteria under a combined license, upon review and approval by the Department and the sponsor. Adjustments to the ITAAC review schedule must be in writing, expressly approved by the Department and the sponsor, and remain in effective for determining covered events unless and until a subsequently issued ITAAC review schedule is approved by the parties.

### Subpart C—Claims Administration Process

#### § 950.20 General provisions.

The parties shall include provisions in the Standby Support Contract to specify the procedures and conditions set forth in this subpart for the submission of claims and the payment of covered costs under the Standby Support Contract. A sponsor is required to establish that there is a covered event, a covered delay and a covered cost; the Department is required to establish an exclusion in accordance with § 950.14(b).

#### § 950.21 Notification of covered event.

(a) A sponsor shall submit in writing to the Claims Administrator a notification that a covered event has occurred that has delayed the schedule for construction or testing and that may cause covered delay. The sponsor shall submit the notification to the Claims Administrator no later than thirty (30) days of the end of the covered event and contain the following information:

(1) A description and explanation of the covered event, including supporting documentation of the event;

(2) The duration of the delay in the schedule for construction, testing and full power operation, and the schedule for inspections, tests, analyses and acceptance criteria, if applicable;

(3) The sponsor's projection of the duration of covered delay;

(4) A revised schedule for construction, testing and full power operation, including the dates of system level construction or testing that had been conducted prior to the event; and

(5) A revised inspections, tests, analyses, and acceptance criteria schedule, if applicable, including the dates of Commission review of inspections, tests, analyses, and acceptance criteria