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(c) Evaluation criteria will address cost, environmental impact, dependability, dispatchability, risk, diversity, and the ability to verify demand-side alternatives. Evaluation criteria will be reviewed as the need for resources changes or when long-term commitments to purchase power expire.

(d) Evaluation criteria will be consistent with Western's power marketing policy, which states that Federal power is to be marketed in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. The policy, found in Delegation Order No. 00-037.00A, is derived from statutes authorizing the sale of power from both Department of the Army and Department of the Interior hydroelectric projects. These statutes include section 5 of the Flood Control Act of 1944, 16 U.S.C. 825(s) and section 9(c) of the Reclamation Project Act of 1939.

(e) Resource acquisition planning will be consistent with power marketing plans and associated contractual obligations.

(f) Resource acquisition decisions will be documented and made available to Western's power customers and the public.

§ 905.51 Transmission planning principles.

Western's transmission planning is conducted to assess the capability of the Federal transmission system to provide adequate and reliable electric service to its customers and the interconnected power grid. These planning efforts occur as part of its participation in regional and sub-regional planning entities as well as Western's Open Access Transmission Tariff.

PART 950—STANDBY SUPPORT FOR CERTAIN NUCLEAR PLANT DELAYS

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Subpart A—General Provisions

§ 950.1 Purpose.

The purpose of this part is to facilitate the construction and full power operation of new advanced nuclear facilities by providing risk insurance for certain delays attributed to the Nuclear Regulatory Commission regulatory process or to litigation.

Department of Energy**§ 950.3****§ 950.2 Scope and applicability.**

This part sets forth the policies and procedures for the award and administration of Standby Support Contracts between the Department and sponsors of new advanced nuclear facilities.

§ 950.3 Definitions.

For the purposes of this part:

Act means the Energy Policy Act of 2005.

Advanced nuclear facility means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Nuclear Regulatory Commission (and such design or a substantially similar design of comparable capacity was not approved on or before that date).

Available indemnification means \$500 million with respect to the initial two reactors and \$250 million with respect to the subsequent four reactors.

Claims administrator means the official in the Department of Energy responsible for the administration of the Standby Support Contracts, including the responsibility to approve or disapprove claims submitted by a sponsor for payment of covered costs under the Standby Support Contract.

Combined license means a combined construction and operating license (COL) for an advanced nuclear facility issued by the Commission.

Commencement of construction means the point in time when a sponsor initiates the pouring of safety-related concrete for the reactor building.

Commission means the Nuclear Regulatory Commission (NRC).

Conditional Agreement means a contractual agreement between the Department and a sponsor under which the Department will execute a Standby Support Contract with the sponsor if and only if the sponsor is one of the first six sponsors to satisfy the conditions precedent to execution of a Standby Support Contract, and if funding and other applicable contractual, statutory and regulatory requirements are satisfied.

Construction means the construction activities related to the advanced nuclear facility encompassed in the time period after commencement of construction and before the initiation of

fuel load for the advanced nuclear facility.

Covered cost means:

(1) Principal or interest on any debt obligation financing an advanced nuclear facility (but excluding charges due to a borrower's failure to meet a debt obligation unrelated to the delay); and

(2) Incremental costs that are incurred as a result of covered delay.

Covered delay means a delay in the attainment of full power operation of an advanced nuclear facility caused by a covered event, as defined by this section.

Covered event means an event that may result in a covered delay due to:

(1) The failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses and acceptance criteria established under the combined license;

(2) The conduct of pre-operational hearings by the Commission for the advanced nuclear facility; or

(3) Litigation that delays the commencement of full power operations of the advanced nuclear facility.

Department means the United States Department of Energy.

Full power operation means the point at which the sponsor first synchronizes the advanced nuclear facility to the electrical grid.

Grant account means the account established by the Secretary that receives appropriations or non-Federal funds in an amount sufficient to cover the amount of incremental costs for which indemnification is available under a Standby Support Contract.

Incremental costs means the incremental difference between:

(1) The fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for a covered delay; and

(2) The contractual price of power from the advanced nuclear facility subject to the delay.

Initial two reactors means the first two reactors covered by Standby Support Contracts that receive a combined license and commence construction.

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Litigation means adjudication in Federal, State, local or tribal courts, including appeals of Commission decisions related to the combined license process to such courts, but excluding administrative litigation that occurs at the Commission related to the combined license process.

Loan cost means the net present value of the estimated cash flows of:

(1) Payments by the government to cover defaults and delinquencies, interest subsidies, or other payments; and

(2) Payments to the government including origination and other fees, penalties and recoveries, as outlined under the Federal Credit Reform Act of 1990.

Pre-operational hearing means any Commission hearing that is provided for in 10 CFR part 52, after issuance of the combined license.

Program account means the account established by the Secretary that receives appropriations or loan guarantee fees in an amount sufficient to cover the loan costs.

Program administrator means the Department official authorized by the Secretary to represent the Department in the administration and management of the Standby Support Program, including negotiating with and entering into a Conditional Agreement or a Standby Support Contract with a sponsor.

Related party means the sponsor's parent company, a subsidiary of the sponsor, or a subsidiary of the parent company of the sponsor.

Secretary means the Secretary of Energy or a designee.

Sponsor means a person whose application for a combined license for an advanced nuclear facility has been docketed by the Commission.

Standby Support Contract means the contract that, when entered into by a sponsor and the Program Administrator pursuant to section 638 of the Energy Policy Act of 2005 after satisfaction of the conditions in § 950.12 and any other applicable contractual, statutory and regulatory requirements, establishes the obligation of the Department to compensate covered costs in the event of a covered delay subject to the terms and conditions specified in the Standby Support Contract.

Standby Support Program means the program established by section 638 of the Act as administered by the Department of Energy.

Subsequent four reactors means the next four reactors covered by Standby Support Contracts, after the initial two reactors, which receive a combined license and commence construction.

System-level construction schedule means an electronic critical path method schedule identifying the dates and durations of plant systems installation (but excluding details of components or parts installation), sequences and interrelationships, and milestone dates from commencement of construction through full power operation, using software acceptable to the Department.

Subpart B—Standby Support Contract Process**§ 950.10 Conditional agreement.**

(a) *Purpose.* The Department and a sponsor may enter into a Conditional Agreement. The Department will enter into a Standby Support Contract with the first six sponsors to satisfy the specified conditions precedent for a Standby Support Contract if and only if all funding and other contractual, statutory and regulatory requirements have been satisfied.

(b) *Eligibility.* A sponsor is eligible to enter into a Conditional Agreement with the Program Administrator after the sponsor has submitted to the Department the following information but before the sponsor receives approval of the combined license application from the Commission:

(1) An electronic copy of the combined license application docketed by the Commission pursuant to 10 CFR part 52, and if applicable, an electronic copy of the design certification or early site permit, or environmental report referenced or included with the sponsor's combined license application;

(2) A summary schedule identifying the projected dates of construction, testing, and full power operation;

(3) A detailed business plan that includes intended financing for the project including the credit structure and all sources and uses of funds for the project, the most recent private

credit rating or other similar credit analysis for project related covered financing, and the projected cash flows for all debt obligations of the advanced nuclear facility which would be covered under the Standby Support Contract;

(4) The sponsor's estimate of the amount and timing of the Standby Support payments for debt service under covered delays; and

(5) The estimated dollar amount to be allocated to the sponsor's covered costs for principal or interest on the debt obligation of the advanced nuclear facility and for incremental costs, including whether these amounts would be different if the advanced nuclear facility is one of the initial two reactors or one of the subsequent four reactors.

(c) The Program Administrator shall enter into a Conditional Agreement with a sponsor upon a determination by the Department that the sponsor is eligible for a Conditional Agreement, the information provided by the sponsor under paragraph (b) of this section is accurate and complete, and the Conditional Agreement is consistent with applicable laws and regulations.

EFFECTIVE DATE NOTE: At 71 FR 46325, Aug. 11, 2006, § 950.10 was revised. Paragraph (b) of this section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 950.11 Terms and conditions of the Conditional Agreement.

(a) *General.* Each Conditional Agreement shall include a provision specifying that the Program Administrator and the sponsor will enter into a Standby Support Contract provided that the sponsor is one of the first six sponsors to fulfill the conditions precedent specified in § 950.12, subject to certain funding requirements and limitations specified in § 950.12 and any other applicable contractual, statutory and regulatory requirements.

(b) *Allocation of Coverage.* Each Conditional Agreement shall include a provision specifying the amount of coverage to be allocated under the Standby Support Contract to cover principal or interest costs and to cover incremental costs, including a provision on whether

the allocation shall be different if the advanced nuclear facility is one of the initial two reactors or one of the subsequent four reactors, subject to paragraphs (c) and (d) of this section. A sponsor may elect to allocate 100 percent of the coverage to either the Program Account or the Grant Account.

(c) *Funding.* Each Conditional Agreement shall contain a provision that the Program Account or Grant Account shall be funded in advance of execution of the Standby Support Contract and in the following manner, subject to the conditions of paragraphs (d) and (e) of this section. Under no circumstances will the amount of the coverage for payments of principal or interest under a Standby Support Contract exceed 80 percent of the total of the financing guaranteed under that Contract.

(1) The Program Account shall receive funds appropriated to the Department, loan guarantee fees, or a combination of appropriated funds and loan guarantee fees that are in an amount equal to the loan costs associated with the amount of principal or interest covered by the available indemnification. Loan costs may not be paid from the proceeds of debt guaranteed or funded by the Federal government. The parties shall specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Program Account to be contributed by appropriated funds to the Department, by the sponsor, by a non-federal source, or by a combination of these funding sources. Covered costs paid through the Program Account are backed by the full faith and credit of the United States.

(2) The Grant Account shall receive funds appropriated to the Department, funds from a sponsor, funds from a non-Federal source, or a combination of appropriated funds and funds from the sponsor or other non-Federal source, in an amount equal to the incremental costs. The parties shall specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Grant Account to be contributed by appropriated funds to the Department, by the sponsor, by a non-Federal source, or by a combination of these funding sources.

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(d) *Reconciliation.* Each Conditional Agreement shall include a provision that the sponsor shall provide no later than ninety (90) days prior to execution of a Standby Support Contract sufficient information for the Program Administrator to recalculate the loan costs and the incremental costs associated with the advanced nuclear facility, taking into account whether the sponsor's advanced nuclear facility is one of the initial two reactors or the subsequent four reactors.

(e) *Limitations.* Each Conditional Agreement shall contain a provision that limits the Department's contribution of Federal funding to the Program Account or the Grant Account to only those amounts, if any, that are appropriated to the Department in advance of the Standby Support Contract for the purpose of funding the Program Account or Grant Account. In the event the amount of appropriated funds to the Department for deposit in the Program Account or Grant Account is not sufficient to result in an amount equal to the full amount of the loan costs or incremental costs resulting from the allocation of coverage under the Conditional Agreement pursuant to 950.11(b), the sponsor shall no later than sixty (60) days prior to execution of the Standby Support Contract:

(1) Notify the Department that it shall not execute a Standby Support Contract; or

(2) Notify the Department that it shall provide the anticipated contributions to the Program Account or Grant Account as specified in the Conditional Agreement pursuant to 950.11(c)(1). The sponsor shall have the option to provide additional funds to the Program Account or Grant Account up to the amount equal to the full amount of loan costs or incremental costs. In the event the sponsor does not provide sufficient additional funds to fund the Program Account or the Grant Account in an amount equal to the full amount of loan costs or incremental costs, then the amounts of coverage available under the Standby Support Contract shall be reduced to reflect the amounts deposited in the Program Account or Grant Account. If the sponsor elects less than the full amount of coverage available under the law, then the

sponsor shall not have recourse against, and the Department is not liable for, any claims for an amount of covered costs in excess of that reduced amount of coverage or the amount deposited in the Grant Account upon execution of the Standby Support Contract, notwithstanding any other provision of law.

(f) *Termination of Conditional Agreements.* Each Conditional Agreement shall include a provision that the Conditional Agreement remains in effect until such time as:

(1) The sponsor enters into a Standby Support Contract with the Program Administrator;

(2) The sponsor has commenced construction on an advanced nuclear facility and has not entered into a Standby Support Contract with the Program Administrator within thirty (30) days after commencement of construction;

(3) The sponsor notifies the Program Administrator in writing that it wishes to terminate the Conditional Agreement, thereby extinguishing any rights or obligations it may have under the Conditional Agreement;

(4) The Program Administrator has entered into Standby Support Contracts that cover three different reactor designs, and the Conditional Agreement is for an advanced nuclear facility of a different reactor design than those covered under existing Standby Support Contracts; or

(5) The Program Administrator has entered into six Standby Support Contracts.

§ 950.12 Standby Support Contract Conditions.

(a) *Conditions Precedent.* If Program Administrator has not entered into six Standby Support Contracts, the Program Administrator shall enter into a Standby Support Contract with the sponsor, consistent with applicable statutes and regulations and subject to the conditions set forth in paragraphs (b) and (c) of this section, upon a determination by the Department that all the conditions precedent to a Standby Support Contract have been fulfilled, including that the sponsor has:

(1) A Conditional Agreement with the Department, consistent with this subpart;

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(2) A combined license issued by the Commission;

(3) Documentation that it possesses all Federal, State, or local permits required by law to commence construction;

(4) Documentation that it has commenced construction of the advanced nuclear facility;

(5) Documented coverage of insurance required for the project by the Commission and lenders;

(6) Paid any required fees into the Program Account and the Grant Account, as set forth in the Conditional Agreement and paragraph (b) of this section;

(7) Provided to the Program Administrator, no later than ninety (90) days prior to execution of the contract, the sponsor's detailed schedule for completing the inspections, tests, analyses and acceptance criteria in the combined license and informing the Commission that the acceptance criteria have been met; and the sponsor's proposed schedule for review of such inspections, tests, analyses and acceptance criteria by the Commission, consistent with § 950.14(a) of this part and which the Department will evaluate and approve; and

(8) Provided to the Program Administrator, no later than ninety (90) days prior to execution of the contract, a detailed systems-level construction schedule that includes a schedule identifying projected dates of construction, testing and full power operation of the advanced nuclear facility.

(9) Provided to the Program Administrator, no later than ninety (90) days prior to the execution of the contract, a detailed and up-to-date plan of financing for the project including the credit structure and all sources and uses of funds for the project, and the projected cash flows for all debt obligations of the advanced nuclear facility.

(b) *Funding.* No later than thirty (30) days prior to execution of the contract, and consistent with section 638(b)(2)(C), funds in amounts determined pursuant to § 950.11(e) have been made available and shall be deposited in the Program Account or the Grant Account respectively.

(c) *Limitations.* The Department shall not enter into a Standby Support Contract, if:

(1) *Program Account.* The contract provides coverage of principal or interest costs for which the loan costs exceed the amount of funds deposited in the Program Account; or

(2) *Grant Account.* The contract provides coverage of incremental costs that exceed the amount of funds deposited in the Grant Account.

(d) *Cancellation by Abandonment.* (1) If the Program Administrator cancels a Standby Support Contract for abandonment pursuant to 950.13(f)(1), the Program Administrator may re-execute a Standby Support Contract with a sponsor other than a sponsor or that sponsor's assignee with whom the Department had a cancelled contract, provided that such replacement Standby Support Contract is executed in accordance with the terms and conditions set forth in this part, and shall be deemed to be one of the subsequent four reactors under this part.

(2) Not more than two Standby Support Contracts may be re-executed in situations involving abandonment and cancellation by the Program Administrator.

EFFECTIVE DATE NOTE: At 71 FR 46325, Aug. 11, 2006, § 950.12 was revised. Paragraph (a) of this section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 950.13 Standby Support Contract: General provisions.

(a) *Purpose.* Each Standby Support Contract shall include a provision setting forth an agreement between the parties in which the Department shall provide compensation for covered costs incurred by a sponsor for covered events that result in a covered delay of full power operation of an advanced nuclear facility.

(b) *Covered facility.* Each Standby Support Contract shall include a provision of coverage only for an advanced nuclear facility which is not a federal entity. Each Standby Support Contract shall also include a provision to specify the advanced nuclear facility to be covered, along with the reactor design,

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and the location of the advanced nuclear facility.

(c) *Sponsor contribution.* Each Standby Support Contract shall include a provision to specify the amount that a sponsor has contributed to funding each type of account.

(d) *Maximum compensation.* Each Standby Support Contract shall include a provision to specify that the Program Administrator shall not pay compensation under the contract:

(1) In an aggregate amount that exceeds the amount of coverage up to \$500 million each for the initial two reactors or up to \$250 million each for the subsequent four reactors;

(2) In an amount for principal or interest costs for which the loan costs exceed the amount deposited in the Program Account; and

(3) In an amount for incremental costs that exceed the amount deposited in the Grant Account.

(e) *Term.* Each Standby Support Contract shall include a provision to specify the date at which the contract commences as well as the term of the contract. The contract shall enter into force on the date it has been signed by both the sponsor and the Program Administrator. Subject to the cancellation provisions set forth in paragraph (f) of this section, the contract shall terminate when all claims have been paid up to the full amounts to be covered under the Standby Support Contract, or all disputes involving claims under the contract have been resolved in accordance with subpart D of this part.

(f) *Cancellation provisions.* Each Standby Support Contract shall provide for cancellation in the following circumstances:

(1) If the sponsor abandons construction, and the abandonment is not caused by a covered event or force majeure, the Program Administrator may cancel the Standby Support Contract by giving written notice thereof to the sponsor and the parties have no further rights or obligations under the contract.

(2) If the sponsor does not require continuing coverage under the contract, the sponsor may cancel the Standby Support Contract by giving written notice thereof to the Program

Administrator and the parties have no further rights or obligations under the contract.

(3) For such other cause as agreed to by the parties.

(g) *Termination by sponsor.* Each Standby Support Contract shall include a provision that prohibits a sponsor or any related party from executing another Standby Support Contract, if the sponsor elects to terminate its original existing Standby Support Contract, unless the sponsor has cancelled or terminated construction of the reactor covered by its original existing Standby Support Contract.

(h) *Assignment.* Each Standby Support Contract shall include a provision on assignment of a sponsor's rights and obligations under the contract and assignment of payment of covered costs. The Program Administrator shall permit the assignment of payment of covered costs with prior written notice to the Department. The Program Administrator shall permit assignment of rights and obligations under the contract with the Department's prior approval. The sponsor may not assign its rights and obligations under the contract without the prior written approval of the Program Administrator and any attempt to do so is null and void.

(i) *Claims administration.* Each Standby Support Contract shall include a provision to specify a mechanism for administering claims pursuant to the procedures set forth in subpart C of this part.

(j) *Dispute resolution.* Consistent with the Administrative Dispute Resolution Act, each Standby Support Contract shall include a provision to specify a mechanism for resolving disputes pursuant to the procedures set forth in subpart D of this part.

(k) *Re-estimation.* Consistent with the Federal Credit Reform Act (FCRA) of 1990, the sponsor shall provide all needed documentation as required in § 950.12 to allow the Department to annually re-estimate the loan cost needed in the financing account as that term is used in 2 U.S.C. 661a(7) and funded by the Program Account. "The sponsor is neither responsible for any increase in loan costs, nor entitled to recoup fees

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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

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that had been conducted prior to the event.

(b) An authorized representative of the sponsor shall sign the notification of a covered event, certify the notification is made in good faith and the covered event is not an exclusion as specified in § 950.14(b), and represent that the supporting information is accurate and complete to the sponsor's knowledge and belief.

§ 950.22 Covered event determination.

(a) *Completeness review.* Upon notification of a covered event from the sponsor, the Claims Administrator shall review the notification for completeness within thirty (30) days of receipt. If the notification is not complete, the Claims Administrator shall return the notification within thirty (30) days of receipt and specify the incomplete information for submission by the sponsor to the Claims Administrator in time for a determination by the Claims Administrator in accordance with paragraph (c) of this section.

(b) *Covered Event Determination.* The Claims Administrator shall review the notification and supporting information to determine whether there is agreement by the Claims Administrator with the sponsor's representation of the event as a covered event (Covered Event Determination) based on a review of the contract conditions for covered events and exclusions.

(1) If the Claims Administrator believes the event is an exclusion as set forth in § 950.14(b), the Claims Administrator shall request within 30 days of receipt of the notification of a covered event information in the sponsor's possession that is relevant to the exclusion. The sponsor shall provide the requested information to the Administrator within 20 days of receipt of the Administrator's request.

(2) The sponsor's failure to provide the requested information in a complete or timely manner constitutes a basis for the Claims Administrator to disagree with the sponsor's covered event notification as provided in paragraph (c) of this section, and to deny a claim for covered costs related to the exclusion as provided in § 950.24 of this part.

(c) *Timing.* The Claims Administrator shall notify the sponsor within sixty (60) days of receipt of the notification whether the Administrator agrees with the sponsor's representation, disagrees with the representation, requires further information, or is an exclusion. If the sponsor disagrees with the Covered Event Determination, the parties shall resolve the dispute in accordance with the procedures set forth in subpart D of this part.

§ 950.23 Claims process for payment of covered costs.

(a) *General.* No more than 120 days of when a sponsor was scheduled to attain full power operation and expects it will incur covered costs, the sponsor may make a claim upon the Department for the payment of its covered costs under the Standby Support Contract. The sponsor shall file a Certification of Covered Costs and thereafter such Supplementary Certifications of Covered Costs as may be necessary to receive payment under the Standby Support Contract for covered costs.

(b) *Certification of Covered Costs.* The Certification of Covered Costs shall include the following:

(1) A Claim Report, including the information specified in paragraph (c) of this section;

(2) A certification by the sponsor that:

(i) The covered costs listed on the Claim Report filed pursuant to this section are losses to be incurred by the sponsor;

(ii) The claims for the covered costs were processed in accordance with appropriate business practices and the procedures specified in this subpart; and

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

(c) *Claim Report.* For purposes of this part, a "Claim Report" is a report of information about a sponsor's underlying claims that, in the aggregate, constitute the sponsor's covered costs. The Claim Report shall include, but is not limited to:

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(1) Detailed information substantiating the duration of the covered delay;

(2) Detailed information about the covered costs associated with covered delay, including as applicable:

(i) The amount of payment for principal or interest during the covered delay, including the relevant dates of payment, amounts of payment and any other information deemed relevant by the Department, and the name of the holder of the debt, if the debt obligation is held by a Federal agency; or

(ii) The underlying payment during the covered delay related to the incremental cost of purchasing power to meet contractual agreements, including any documentation deemed relevant by the Department to calculate the fair market price of power.

(d) *Supplementary Certification of Covered Cost.* If the total amount of the covered costs due to a sponsor under the Standby Support Contract has not been determined at the time the Certification of Covered Costs has been filed, the sponsor shall file monthly, or on a schedule otherwise determined by the Claims Administrator, Supplementary Certifications of Covered Costs updating the amount of the covered costs owed to the sponsor. Supplementary Certifications of Covered Costs shall include a Claim Report and a certification as described in this section.

(e) *Supplementary information.* In addition to the information required in paragraphs (b) and (c) of this section, the Claims Administrator may request such additional supporting documentation as required to ascertain the allowable covered costs sustained by a sponsor.

EFFECTIVE DATE NOTE: At 71 FR 46325, Aug. 11, 2006, § 950.23 was revised. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 950.24 Claims determination for covered costs.

(a) No later than thirty (30) days from the sponsor's submission of a Certification of Covered Costs, the Claims Administrator shall issue a Claim Determination identifying those claimed

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costs deemed to be allowable based on an evaluation of:

(1) The duration of covered delay, taking into account contributory or concurrent delays resulting from exclusions from coverage as established by the Claims Administrator in accordance with § 950.22;

(2) The covered costs associated with covered delay, including an assessment of the sponsor's due diligence in mitigating or ending covered costs, as set forth in § 950.23;

(3) Any adjustments to the covered costs, as set forth in § 950.26; and

(4) Other information as necessary and appropriate.

(b) The Claim Determination shall state the Claims Administrator's determination that the claim shall be paid in full, paid in an adjusted amount as deemed allowable by the Claims Administrator, or rejected in full.

(c) Should the Claims Administrator conclude that the sponsor has not supplied the required information in the Certification of Covered Costs or any supporting documentation sufficient to allow reasonable verification of the duration of the covered delay or covered costs, the Claims Administrator shall so inform the sponsor and specify the nature of additional documentation requested, in time for the sponsor to supply supplemental documentation and for the Claims Administrator to issue the Claim Determination.

(d) Should the Claims Administrator find that any claimed covered costs are not allowable or otherwise should be considered excluded costs under the Standby Support Contract, the Claims Administrator shall identify such costs and state the reason(s) for that decision in writing. A determination by the Claims Administrator that an event is an exclusion or that the sponsor has not provided complete or timely information relevant to the exclusion as specified in § 950.22 shall provide a basis for the Claims Administrator to find covered costs are not allowable. If the parties cannot agree on the covered costs, they shall resolve the dispute in accordance with the requirements in subpart D of this part.

Department of Energy**§ 950.27****§ 950.25 Calculation of covered costs.**

(a) The Claims Administrator shall calculate the allowable amount of the covered costs claimed in the Certification of Covered Costs as follows:

(1) *Costs covered through Program Account.* The principal or interest on any debt obligation financing the advanced nuclear facility for the duration of covered delay to the extent the debt obligation was included in the calculation of the loan cost; and

(2) *Costs covered by Grant Account.* The incremental costs calculated for the duration of the covered delay. In calculating the incremental cost of power, the Claims Administrator shall consider:

(i) *Fair Market Price.* The fair market price may be determined by the lower of the two options: The actual cost of the short-term supply contract for replacement power, purchased by the sponsor, during the period of delay, or for each day of replacement power by its day-ahead weighted average index price in \$/MWh at the hub geographically nearest to the advanced nuclear facility as posted on the previous day by the Intercontinental Exchange (ICE) or an alternate electronic marketplace deemed reliable by the Department. The daily MWh assumed to be covered is no more than its nameplate capacity multiplied by 24 hours; multiplied by the capacity-weighted U.S. average capacity factor in the previous calendar year, including in the calculation any and all commercial nuclear power units that operated in the United States for any part of the previous calendar year; and multiplied by the average of the ratios of the net generation to the grid for calculating payments to the Nuclear Waste Fund to the nameplate capacity for each nuclear unit included. In addition, the Claims Administrator may consider “fair market price” from other published indices or prices at regional trading hubs and bilateral contracts for similar delivered firm power products and the costs incurred, including acquisition costs, to move the power to the contract-specified point of delivery, as well as the provisions of the covered contract regarding replacement power costs for delivery default; and

(ii) *Contractual price of power.* The contractual price of power shall be determined as the daily weighted average price in equivalent \$/MWh under a contractual supply agreement(s) for delivery of firm power that the sponsor entered into prior to any covered event. The daily MWh assumed to be covered is no more than the advanced nuclear facility’s nameplate capacity multiplied by 24 hours; multiplied by the capacity-weighted U.S. average capacity factor in the previous calendar year, including in the calculation any and all commercial nuclear power units that operated in the United States for any part of the previous calendar year; and multiplied by the average of the ratios of the net generation to the grid for calculating payments to the Nuclear Waste Fund to the nameplate capacity for each nuclear unit included.

§ 950.26 Adjustments to claim for payment of covered costs.

(a) *Aggregate amount of covered costs.* The sponsor’s aggregate amount of covered costs shall be reduced by any amounts that are determined to be either excluded or not covered.

(b) *Amount of Department share of covered costs.* The Department share of covered costs shall be adjusted as follows:

(1) *No excess recoveries.* The share of covered costs paid by the Department to a sponsor shall not be greater than the limitations set forth in § 950.27(d).

(2) *Reduction of amount payable.* The share of covered costs paid by the Department shall be reduced by the appropriate amount consistent with the following:

(i) *Excluded claims.* The Department shall ensure that no payment shall be made for costs resulting from events that are not covered under the contract as specified in § 950.14; and

(ii) *Sponsor due diligence.* Each sponsor shall ensure and demonstrate that it uses due diligence to mitigate, shorten, and to end the covered delay and associated costs covered by the Standby Support Contract.

§ 950.27 Conditions for payment of covered costs.

(a) *General.* The Department shall pay the covered costs associated with a

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Standby Support Contract in accordance with the Claim Determination issued by the Claims Administrator under § 950.24 or the Final Claim Determination under § 950.34, provided that:

(1) Neither the sponsor's claim for covered costs nor any other document submitted to support the underlying claim is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(2) The losses submitted for payment are within the scope of coverage issued by the Department under the terms and conditions of the Standby Support Contract as specified in subpart B of this part; and

(3) The procedures specified in this subpart have been followed and all conditions for payment have been met.

(b) *Adjustments to Payments.* In the event of fraud or miscalculation, the Department may subsequently adjust, including an adjustment obligating the sponsor to repay any payment made under paragraph (a) of this section.

(c) *Suspension of payment for covered costs.* If the Department paid or is paying covered costs under paragraph (a) of this section, and subsequently makes a determination that a sponsor has failed to meet any of the requirements for payment specified in paragraph (a) of this section for a particular covered cost, the Department may suspend payment of covered costs pending investigation and audit of the sponsor's covered costs.

(d) *Amount payable.* The Department's share of compensation for the initial two reactors is 100 percent of the covered costs of covered delay but not more than the coverage in the contract or \$500 million per contract, whichever is less; and for the subsequent four reactors, not more than 50 percent of the covered costs of the covered delay but not more than the coverage in the contract or \$250 million per contract, whichever is less. The Department's share of compensation for the subsequent four reactors is further limited in that the payment is for covered costs of a covered delay that occurs after the initial 180-day period of covered delay.

§ 950.28 Payment of covered costs.

(a) *General.* The Department shall pay to a sponsor covered costs in accordance with this subpart and the terms of the Standby Support Contract. Payment shall be made in such installments and on such conditions as the Department determines appropriate. Any overpayments by the Department of the covered costs shall be offset from future payments to the sponsor or returned by the sponsor to the Department within forty-five (45) days. If there is a dispute, then the Department shall pay the undisputed costs and defer payment of the disputed portion upon resolution of the dispute in accordance with the procedures in subpart D of this part. If the covered costs include principal or interest owed on a loan made or guaranteed by a Federal agency, the Department shall instead pay that Federal agency the covered costs, rather than the sponsor.

(b) *Timing of Payment.* The sponsor may receive payment of covered costs when:

(1) The Department has approved payment of the covered cost as specified in this subpart; and

(2) The sponsor has incurred and is obligated to pay the costs for which payment is requested.

(c) *Payment process.* The covered costs shall be paid to the sponsor designated on the Certification of Covered Costs required by § 950.23, or to the sponsor's assignee as permitted by § 950.13(h). A sponsor that requests payment of the covered costs must receive payment through electronic funds transfer.

Subpart D—Dispute Resolution Process**§ 950.30 General.**

The parties, i.e., the sponsor and the Department, shall include provisions in the Standby Support Contract that specify the procedures set forth in this subpart for the resolution of disputes under a Standby Support Contract. Sections 950.31 and 950.32 address disputes involving covered events; §§ 950.33 and 950.34 address disputes involving covered costs; and §§ 950.36 and 950.37

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address disputes involving other contract matters.

§ 950.31 Covered event dispute resolution.

(a) If a sponsor disagrees with the Covered Event Determination rendered in accordance with § 950.22 and cannot resolve the dispute informally with the Claims Administrator, then the disagreement is subject to resolution as follows:

(1) A sponsor shall, within thirty (30) days of receipt of the Covered Event Determination, deliver to the Claims Administrator written notice of a sponsor's rebuttal which sets forth reasons for its disagreement, including any expert opinion obtained by the sponsor.

(2) After submission of the sponsor's rebuttal to the Claims Administrator, the parties shall have fifteen (15) days during which time they must informally and in good faith participate in mediation to attempt to resolve the disagreement before instituting the process under paragraph (b) of this section. If the parties reach agreement through mediation, the agreement shall constitute a Final Determination on Covered Events.

(3) The parties shall jointly select the mediator(s). The parties shall share equally the cost of the mediation.

(b) If the parties cannot resolve the disagreement through mediation under the timeframe established under paragraph (a)(2) of this section and the sponsor elects to continue pursuing the claim, the sponsor shall within ten (10) days submit any remaining issues in controversy to the Civilian Board of Contract Appeals (Civilian Board) or its successor, for resolution by an Administrative Judge of the Civilian Board utilizing the Civilian Board's Summary Binding Decision procedure. The parties shall abide by the procedures of the Civilian Board for Summary Binding Decision. The parties agree that the decision of the Civilian Board constitutes a Final Determination on Covered Events.

§ 950.32 Final determination on covered events.

(a) If the parties reach a Final Determination on Covered Events through mediation, or Summary Binding Deci-

sion as set forth in this subpart, the Final Determination on Covered Events is a final settlement of the issue, made by the sponsor and the Program Administrator. The sponsor, and the Department, may rely on, and neither may challenge, the Final Determination on Covered Events in any future Certification of Covered Costs related to the covered event that was the subject of that Initial Determination.

(b) The parties agree that no appeal shall be taken or further review sought, and that the Final Determination on Covered Events is final, conclusive, non-appealable and may not be set aside, except for fraud.

§ 950.33 Covered costs dispute resolution.

(a) If a sponsor disagrees with the Claim Determination rendered in accordance with § 950.24 and cannot resolve the dispute informally with the Claims Administrator, then the parties agree that any dispute must be resolved as follows:

(1) A sponsor shall, within thirty (30) days of receipt of the Claim Determination, deliver to the Claims Administrator in writing notice of and reasons for its disagreement (Sponsor's Rebuttal), including any expert opinion obtained by the sponsor.

(2) After submission of the sponsor's rebuttal to the Claims Administrator, the parties have fifteen (15) days to informally and in good faith participate in mediation to resolve the disagreement before instituting the process under paragraph (b) of this section. If the parties reach agreement through mediation, the agreement shall constitute a Final Claim Determination.

(3) The parties shall jointly select the mediator(s). The parties shall share equally the cost of the mediator(s).

(b) If the parties cannot resolve the disagreement through mediation under the timeframe established under paragraph (a)(2) of this section, any remaining issues in controversy shall be submitted by the sponsor within ten (10) days to the Civilian Board or its successor, for resolution by an Administrative Judge of the Civilian Board utilizing the Board's Summary Binding Decision procedure. The parties shall

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abide by the procedures of the Civilian Board for Summary Binding Decision. The parties agree that the decision of the Civilian Board shall constitute a Final Claim Determination.

§ 950.34 Final claim determination.

(a) If the parties reach a Final Claim Determination through mediation, or Summary Binding Decision as set forth in this subpart, the Final Claim Determination is a final settlement of the issue, made by the sponsor and the Program Administrator.

(b) The parties agree that no appeal shall be taken or further review sought and that the Final Claim Determination is final, conclusive, non-appealable, and may not be set aside, except for fraud.

§ 950.35 Payment of final claim determination.

Once a Final Claim Determination is reached by the methods set forth in this subpart, the parties intend that such a Final Claim Determination shall constitute a final settlement of the claim and the sponsor may immediately present to the Department a Final Claim Determination for payment.

§ 950.36 Other contract matters in dispute.

(a) If the parties disagree over terms or conditions of the Standby Support Contract other than disagreements related to covered events or covered costs, then the parties shall engage in informal dispute resolution as follows:

(1) The parties shall engage in good faith efforts to resolve the dispute after written notification by one party to the other that there is a contract matter in dispute.

(2) If the parties cannot reach a resolution of the matter in disagreement within thirty (30) days of the written notification of the matter in dispute, then the parties shall have fifteen (15) days during which time they must informally and in good faith participate in mediation to attempt to resolve the disagreement before instituting the process under paragraph (b) of this section. If the parties reach agreement through mediation, the agreement

shall constitute a Final Agreement on the matter in dispute.

(3) The parties shall jointly select the mediator(s). The parties shall share equally the cost of the mediation.

(b) If the parties cannot resolve the disagreement through mediation under the timeframe established in paragraph (a)(2) of this section and either party elects to continue pursuing the disagreement, that party shall within ten (10) days submit any remaining issues in controversy to the Civilian Board or its successor, for resolution by an Administrative Judge of the Civilian Board utilizing the Civilian Board's Summary Binding Decision procedure. The parties shall abide by the procedures of the Civilian Board for Summary Binding Decision. The parties shall agree that the decision of the Civilian Board constitutes a Final Decision on the matter in dispute.

§ 950.37 Final agreement or final decision.

(a) If the parties reach a Final Agreement on a contract matter in dispute through mediation, or a Final Decision on a contract matter in dispute through a Summary Binding Decision as set forth in this subpart, the Final Agreement or Final Decision is a final settlement of the contract matter in dispute, made by the sponsor and the Program Administrator.

(b) The parties agree that no appeal shall be taken or further review sought, and that the Final Agreement or Final Decision is final, conclusive, non-appealable and may not be set aside, except for fraud.

Subpart E—Audit and Investigations and Other Provisions**§ 950.40 General.**

The parties shall include a provision in the Standby Support Contract that specifies the procedures in this subpart for the monitoring, auditing and disclosure of information under a Standby Support Contract.

§ 950.41 Monitoring/Auditing.

The Department has the right to audit any and all costs associated with the Standby Support Contracts. Auditors who are employees of the United

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States government, who are designated by the Secretary of Energy or by the Comptroller General of the United States, shall have access to, and the right to examine, at the sponsor's site or elsewhere, any pertinent documents and records of a sponsor at reasonable times under reasonable circumstances. The Secretary may direct the sponsor to submit to an audit by a public accountant or equivalent acceptable to the Secretary.

§ 950.42 Disclosure.

Information received from a sponsor by the Department may be available to the public subject to the provision of 5 U.S.C. 552, 18 U.S.C. 1905 and 10 CFR part 1004; provided that:

(a) Subject to the requirements of law, information such as trade secrets, commercial and financial information that a sponsor submits to the Department in writing shall not be disclosed without prior notice to the sponsor in accordance with Department regulations concerning the public disclosure of information. Any submitter asserting that the information is privileged or confidential should appropriately identify and mark such information.

(b) Upon a showing satisfactory to the Program Administrator that any information or portion thereof obtained under this regulation would, if made public, divulge trade secrets or other proprietary information, the Department may not disclose such information.

PART 955 [RESERVED]**PART 960—GENERAL GUIDELINES FOR THE PRELIMINARY SCREENING OF POTENTIAL SITES FOR A NUCLEAR WASTE REPOSITORY****Subpart A—General Provisions**

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