



National Rural Electric Cooperative Association

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PETITION RULE PRM 50-70
(65FR30550)

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Attention: Rulemaking and Adjudications Staff

Subject: Petition for Rulemaking filed by Eric Joseph
Epstein (65 Fed. Reg. 30550, May 12, 2000)

Dear Ms. Vietti-Cook:

NRECA has reviewed, and wishes to comment on, the Petition for Rulemaking filed by Eric Epstein noticed in the May 12, 2000 *Federal Register*. The *Federal Register* notice requested comments on Mr. Epstein's request for the Nuclear Regulatory Commission (NRC) Rulemaking.

The National Rural Electric Cooperative Association (NRECA) is the national service organization representing more than 900 not-for-profit rural electric cooperatives providing central station electricity to more than 34 million consumer-owners in 46 states. Eleven rural electric cooperatives own shares in 16 nuclear units, representing more than 2800 MW of electricity. NRECA provides these comments on behalf of its membership.

NRECA agrees wholeheartedly with the need to ensure adequate financing for the decommissioning of nuclear power plants. For purposes of public health and safety, there must be a reasonable assurance that funding will be available, regardless of the state of industry restructuring.

In its comments, NRECA addresses Mr. Epstein's general concerns about the status of the nuclear industry, as well as his specific recommendations for remedies that he proposes in his Petition.

Mr. Epstein commented that the NRC created a "Legal Loophole" for proportional owners and rural electric cooperatives by limiting reporting and record keeping requirements to

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“power reactor licensees”. Mr. Epstein must be unaware that all minority owners and rural electric cooperatives *ARE* licensees and, as such, are required to provide the NRC with reasonable financial assurance of adequate decommissioning funding. (See September 1998 NRC Final Rule on Financial Assurance Requirements for Decommissioning of Nuclear Power Plants).

Rural electric cooperatives’ participation in nuclear power plants was financed through loans and loan guarantees of the Rural Electrification Administration, now the Rural Utilities Service (RUS), an agency in the Department of Agriculture. RUS worked very closely with these cooperatives to ensure that all cooperatives owning shares in nuclear plants complied with NRC decommissioning funding regulations. This financial oversight is ongoing through RUS’s annual review of generation cooperative rates.

Mr. Epstein challenges the expected 40-year life expectancy of nuclear plants, and cites several examples of reactors that have been prematurely shut down. He is correct about those units, many of which were smaller, non-commercial sized plants even though some were, in fact, of commercial size. On the other hand, the nuclear industry has made dramatic advances in the last 10 years. The remaining nuclear plants (100) are now living up to their full potential, running at 90%+ load factors, rarely being forced out of operation because of problems, and producing low-cost, environmentally friendly electricity that is highly competitive in today’s market. Furthermore, several nuclear units have already received 20-year life extending NRC permits, and the owners of approximately 20 more nuclear units have expressed a desire to make similar life extension requests of the NRC.

Mr. Epstein also expressed concern that Allegheny Electric Cooperative, Inc. (a 10 percent owner of the Susquehanna Steam Electric Station) was not using the same formula for decommissioning funding as was Pennsylvania Power and Light (PPL), the 90 percent owner and station operator. NRC regulations require that the non-operating licensee provide decommissioning funding in a form acceptable to the NRC that would provide reasonable assurance that funds will be available for its share of decommissioning. Minority owners are not required to have the same proportionate amount at any given time as the majority owner, nor are they required to have a similar funding mechanism.

Mr. Epstein expressed concern over the lack of formal coordination between the two nuclear licensees in the Susquehanna Plant, but as stated above, coordination on funding is not required.

Mr. Epstein also expressed concern about Yucca Mountain, and NRECA shares his concern. The Department of Energy (DOE) is charged with the responsibility of providing ultimate storage for nuclear fuel, and has signed contracts with all nuclear plant owners, agreeing to take title to and ultimate charge of the spent fuel. These owners are paying DOE 1 mill per kWh under this agreement. While this issue is troublesome it has no bearing on the financial reporting of minority owners of nuclear power plants.

Addressing the three specific concerns that Mr. Epstein included in his Petition for Rulemaking request:

1. **Proportional owners must conduct bi-annual site specific decommissioning analysis. This is unnecessary.** As shown above, the minority owners are complying with NRC regulations on decommissioning funding, providing independent accounts that will be available when needed. The type of account and the dollars involved are not required to be, on a percentage basis, the same as the majority owner's. Furthermore, NRC regulations (10 CFR 50.75f2) provide for up-to-date assessments of final decommissioning costs within the last 5 years of the end of reactor life, followed by a more accurate assessment within two years after operations have ceased.

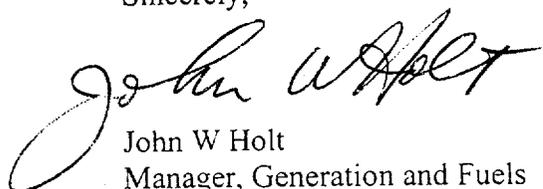
2. **Record keeping and reporting should be applied to all partners in a nuclear generating station, including board members of RECs.** NRECA believes this request is unnecessary since all co-owners, as licensees, are currently complying with NRC regulations, and are reporting on nuclear decommissioning. Minority owners, as licensees, are required to give the NRC adequate and reasonable assurance of adequate decommissioning funding. They are required to pay their proportionate share of operation, maintenance and capitalization of new construction. They are therefore already complying with this request. Furthermore, Mr. Epstein wants to extend reporting requirements, not only to all partners, but also to the boards of directors for the RECs. This is far beyond the current NRC practice for corporate responsibility, is unduly burdensome and adds no value. It also extends NRC requirements to "non-licensees, i.e., REC board members and is inconsistent with well settled corporate law. This suggestion should be denied.

3. **The NRC should require minority owners of nuclear stations to conduct prudence reviews.** Since the minority owners, as licensees, are already complying with NRC requirements on decommissioning, there is no basis for the suggestion. Furthermore, this would put the NRC into the role of ratemaking, a step far from that of ensuring nuclear safety. No such authority is contained in the Atomic Energy Act of 1954 or any subsequent amendments.

The NRC currently has effective regulations to ensure that adequate and reasonable funding is available for the safe decommissioning of existing nuclear units. Should the NRC be concerned that adequate funding is not available for a specific unit or plant, the NRC also has the authority to redress that particular situation. Additional reporting and authority are not required.

Based upon the above comments, NRECA recommends that the NRC deny Mr. Epstein's Petition for Rulemaking and dismiss, with prejudice, the Petition in its entirety.

Sincerely,



John W Holt
Manager, Generation and Fuels
NRECA