

POLICY ISSUE NOTATION VOTE

April 26, 2001

SECY-01-0075

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: DENIAL OF PETITION TO AMEND THE FINANCIAL ASSURANCE
REQUIREMENTS FOR DECOMMISSIONING NUCLEAR POWER REACTORS
(PRM-50-70)

PURPOSE:

To obtain the Commission's approval to deny the petition for rulemaking to amend the financial assurance requirements for decommissioning nuclear power reactors.

DISCUSSION:

On January 3, 2000, Mr. Eric Joseph Epstein submitted a petition (PRM-50-70) (Attachment 1) relating to financial assurance requirements for decommissioning nuclear power reactors. The petitioner requested that the Nuclear Regulatory Commission (NRC) amend its financial assurance requirements for decommissioning nuclear power reactors to: (1) require uniform reporting and recordkeeping for all "proportional owners" of nuclear generating stations (defined by the petitioner as partial owners of nuclear generating stations who are not licensees), (2) modify and strengthen current nuclear decommissioning accounting requirements for proportional owners, and (3) order proportional owners to conduct prudency reviews to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but shareholders and board members of rural electric cooperatives as well.

Contact:
Brian J. Richter
NRR/DRIP/RGEB
301-415-1978

On May 12, 2000 (65 FR 30550), the NRC published a notice of receipt and requested public comment on the petition for rulemaking. Nine commenters responded to the petition, eight of whom were licensees of nuclear power plants or groups representing these licensees. The eight licensee commenters urged that the NRC deny all parts of the petition. They addressed all three of the petitioner's requests, as well as ancillary issues raised by the petitioner. The ninth commenter, a consulting firm specializing in performing nuclear power plant decommissioning cost estimates, did not respond to the actions proposed by the petitioner, but responded only to assertions the petitioner made about the consultant's decommissioning cost estimation techniques.

The staff believes the petition should be denied for the following reasons.

- With respect to the petitioner's first proposed action, the NRC already requires uniform reporting and recordkeeping for all power reactor licensees in 10 CFR 50.75(f), which was published as a final rule in the *Federal Register* on September 22, 1998 (63 FR 50465). These requirements apply equally to majority or minority ("proportional") owners, each of whom the NRC considers to be licensees. Hence, the reporting requirements do not need to be amended.
- The petitioner's second proposed action is that the NRC modify and strengthen current nuclear decommissioning accounting requirements for proportional owners. However, the NRC already in 10 CFR 50.75(f) requires biennial financial decommissioning status reports from proportional owners (which are considered licensees by the NRC). In SECY-99-170 (July 1, 1999), the staff noted that "all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shut down their units."
- The petitioner's third proposed action is that the Commission require proportional owners to conduct prudency reviews to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers, but shareholders and board members of rural electric cooperatives as well. However, the NRC has no legal authority in this area. Therefore, no NRC action is warranted.

The petitioner also raised certain ancillary issues. The NRC staff has addressed the issues raised by the petitioner in the attached draft *Federal Register* notice (Attachment 2) along with the comments received on the issues.

COORDINATION:

The Office of the General Counsel has no legal objection to the denial of this petition.

RECOMMENDATION:

That the Commission

1. Approve the denial of the petition for rulemaking and approve publication of the *Federal Register* notice announcing the denial.
2. Inform Congress about the denial.
3. Note that a letter is attached for the Secretary's signature (Attachment 3) informing the petitioner of the Commission's decision to deny his petition.

/RA/

William D. Travers
Executive Director
for Operations

Attachments: As stated

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Package Accession No.: ML010680019
SECY Paper: ML010680025
Attachment 1 Petition: ML010680223
Attachment 1 FRN: ML010680063
Letter to Petitioner: ML010680086

***See previous concurrence**

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