

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-70]

Eric Joseph Epstein; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC or “Commission”) is denying a petition for rulemaking (PRM-50-70) submitted by Eric Joseph Epstein. The petitioner requested that NRC amend its financial assurance requirements for decommissioning nuclear power reactors to: 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), modify and strengthen current nuclear decommissioning accounting requirements for proportional owners, and 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. The NRC is denying the petition because current regulations adequately address the first two requested actions and the NRC does not have the legal authority to require the third requested action.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC’s letter of denial to the petitioner are available for public inspection or copying in the NRC

Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also available at the NRC's rulemaking website at <http://ruleforum.llnl.gov>.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1978, e-mail: bjr@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

On May 12, 2000 (65 FR 30550), the NRC published a notice of receipt of a petition for rulemaking (PRM) filed by Eric Joseph Epstein. The petitioner requested that the 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 prudence reviews to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but shareholders and/or board members of rural electric cooperatives as well. In addition, the petitioner raised several issues that, while related to his three general requests for rulemaking, were not explicitly part of the petitioner's requested remedies. These issues are discussed more fully after the petitioner's three requests.

The petitioner submitted the petition because he believes the funding component for decommissioning provided by proportional owners of nuclear generating stations, including

rural electric cooperatives (RECs), is “fatally flawed” and likely to contribute to inadequate funding.

The petitioner stated that proportional owners are not required to submit periodic cost projections, conduct site-specific studies, or coordinate with the power reactor licensee. Also, the petitioner stated that proportional owners are not mandated by the NRC to verify, report, or monitor recordkeeping relating to nuclear decommissioning funding mechanisms.

The petitioner believes it is grossly unfair and inequitable to require Federal taxpayers and State ratepayers to provide a financial safety net for the nuclear investments of proportional owners. The petitioner offers the following reasons to support his belief: (1) proportional owners, including RECs, aggressively supported construction, licensing, and operation of nuclear generating stations; (2) minority owners were fully cognizant that no commercial nuclear reactor had been decommissioned, and that a solution to nuclear waste disposal did not exist; (3) neither the utility industry, proportional owners, nor RECs have actively sponsored decommissioning research or sought good faith solutions to the permanent storage and isolation of low-level and high-level radioactive waste; and (4) proportional owners and RECs willfully pursued a financial investment in nuclear energy which they knew was fraught with huge uncertainties.

Public Comments on the Petition

The NRC received nine comments in response to the petition. Eight commenters, all of whom were licensees or groups representing licensees addressed the three broad topic areas of the petition. The ninth set of comments was received from Thomas LaGuardia of TLG Services, Inc., an industry consultant which provides decommissioning cost estimates. TLG's comments did not respond to the petition itself, but identified 16 statements or groups of

statements in the petition that questioned the reliability of TLG's estimation methods and results. TLG addressed those statements.

All eight commenters who addressed the specific requests of the petition recommended that the NRC deny all parts of the petition. Two of the commenters simply endorsed the position of one of the other commenters, the Nuclear Energy Institute (NEI). In general, the commenters provided similar arguments as to why the petition should be denied in its entirety. Further, TLG did not explicitly state that NRC should grant or deny the petition. However, given that TLG questioned many of the statements made by the petitioner to form his case, it appears that TLG finds the petition factually deficient. As described below, the NRC staff's evaluation of the petition agreed with the comments in most respects.

First, the petitioner requested the NRC to 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). Several commenters noted that all entities with an ownership interest in a commercial nuclear power plant are NRC licensees. These consist of minority owners, and non-operating owners, including rural electric cooperatives. These owners are required to provide the NRC with reasonable decommissioning financial assurance.

The NRC staff has reached a conclusion similar to the commenters. Since the Marble Hill decision¹ NRC has determined that all co-owners are co-licensees, subject to all NRC regulations, including those with respect to decommissioning reporting. Thus, the NRC staff finds that this issue raised by the petitioner is moot, because the remedy sought by the petitioner is already in place.

¹Public Service Company of Indiana, Inc. Marble Hill (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 198-201 (1978).

Secondly, the petitioner requested the NRC to modify and strengthen its nuclear decommissioning accounting requirements for proportional owners. The commenters noted, as stated above, that proportional owners are considered licensees by the NRC and, as such, are required to provide assurance to the NRC of adequate decommissioning funding. Several commenters noted that after receiving the biennial decommissioning funding status reports, the NRC staff issued an assessment of the reports (SEC-99-170, July 1, 1999) which indicated that the licensees were accumulating sufficient funds for decommissioning. Further, the commenters noted the requirements of §50.75 and §50.82 also provide for licensees to submit up-to-date assessments of final decommissioning costs at or about 5 years prior to the projected end of operations, and a post shutdown decommissioning activities report (PSDAR) containing a cost estimate for decommissioning within 2 years after permanent cessation of operations.

As indicated in its conclusion on the petitioner's first issue, the staff finds that co-owners are already providing information on the status of their decommissioning funds. Based on the NRC staff's review of these status reports in 1999, the NRC staff concludes that the NRC's accounting requirements are currently sufficient to adequately protect public health and safety.

Thirdly, the petitioner requested the NRC to require proportional owners to conduct a prudency review 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. All the licensees or groups of licensees who commented noted that NRC does not have the legal authority to require such action. The comments from Allegheny Electric Cooperative and PPL Susquehanna, LLC noted that a licensee's decommissioning funding prudency is under the jurisdiction of a State Public Utility Commission, the Federal Energy Regulatory Commission, or ratemaking authority of a municipal utility, a Rural Electric Cooperative, and other electric utility that establishes its own rates. Also, one commenter

stated that any attempt by the NRC to impose or enforce these remedies would enmesh it in lengthy and substantial legal challenges.

The NRC staff has concluded that the NRC does not have the authority to require co-owners to conduct prudency reviews. This is a rate-making issue beyond the NRC's jurisdiction.

The petitioner also raised some other issues that, while not part of the three requested remedies, were responded to by commenters. The first is the issue of non-radiological costs, which the petitioner is concerned about because NRC does not require licensees to provide such estimates. Some commenters stated that the NRC has no authority to require licensees to return facilities to "greenfield" condition because it is not a matter of radiological public health and safety. Thus, the commenters stated that the NRC has no programmatic need to obtain such data.

A second ancillary issue raised by the petitioner was that some nuclear power plants may not operate for the full terms of their licenses, resulting in premature shutdown of the plants. Some commenters stated that no licensee of a prematurely shut-down plant has ever not been able to pay for its plant's decommissioning. Lastly, in response to the petitioner's position that premature shutdowns will occur, some commenters pointed out that a number of plants are in the process of applying for license renewals.

Next, the petitioner stated that proportional owners of power reactors should "be required to account for the possibility of increased spent fuel storage costs, in the event that a high level waste storage facility is unavailable." One commenter, NEI, quotes from a Department of Energy report² that indicates that Yucca Mountain remains a viable site for spent fuel storage.

²"Viability Assessment of a Repository at Yucca Mountain," U.S. Department of Energy (DOE-RW-0508), December 1998, page 36.

The petitioner also raised two specific issues relating to Allegheny Electric Cooperative and PPL Susquehanna, LLC, namely low-level waste disposal and the adequacy of Allegheny's decommissioning funding. Allegheny and Susquehanna submitted comments jointly. With respect to the first issue, they noted that minimum funding requirements for low-level waste disposal are addressed in "Report on Waste Burial Charges," NUREG-1307. The most recent edition is Revision 9, which was published in September 2000. With respect to the funding adequacy issue, Allegheny submitted its required report in March 1999 and its resubmittal in May of that year. NRC had no follow-up concerns with the resubmittal. In addition, Allegheny is a rural electric cooperative that sets its own rates. Therefore, Allegheny's current funding assurance method meets the NRC's requirements.

Reasons for Denial

In summary, the NRC is denying the petition for the following reasons:

1. With respect to the petitioner's first request to require uniform reporting and recordkeeping for all 'proportional owners' of nuclear generating stations, the NRC believes this issue is moot. This is because in Public Service Company of Indiana, Inc. Marble Hill (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 198-201 (1978) it was determined that all co-owners are co-licensees. Therefore, under the requirements of the final rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, September 22, 1998 (63 FR 50465) the co-owners are already required to comply with the reporting and recordkeeping requirements. In addition, below, the NRC staff determined that all licensees, including co-owners, complied with the initial decommissioning status report submitted in March 1999. The NRC staff issued an assessment of the reports (SECY-99-170, July 1, 1999) which indicated that "There is no evidence that the nuclear energy industry as a

whole, or any particular facility or licensee, are failing to accumulate sufficient funds for decommissioning.” As a result, the NRC finds no need to act on this portion of the petition and denies it.

2. The petitioner’s second request was to have NRC modify and strengthen its nuclear decommissioning accounting requirements for proportional owners. As stated above, proportional owners are considered licensees by the NRC. Also, in 10 CFR 50.75(f), beginning in March 1999, every power reactor licensee is required to file a biennial decommissioning funding status report. Further, the NRC staff has determined that licensees are complying with the reporting and recordkeeping requirements. The NRC staff issued an assessment of the reports (SEC-99-170, July 1, 1999) which indicated that “There is no evidence that the nuclear energy industry as a whole, or any particular facility or licensee, are failing to accumulate sufficient funds for decommissioning.” Further, the requirements of §50.75 and §50.82 also provide for licensees to submit up-to-date assessments of final decommissioning costs at or about 5 years prior to the projected end of operations, and a post shutdown decommissioning activities report (PSDAR) containing a cost estimate for decommissioning within 2 years after permanent cessation of operations. These requirements pertain to all licensees, including proportional owners. As a result, the NRC finds no need to act on this portion of the petition and denies it.

3. The petitioner’s third request was for the NRC to require proportional owners to conduct prudency reviews. NRC, under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any Federal statute, does not have the legal authority to require such action. Therefore, NRC also denies this portion of the petition.

As noted above in the comment section, the petitioner also raised several ancillary comments. The first was the issue of non-radiological costs. Given the NRC has no authority to require licensees to return the facilities to “greenfield” condition, the NRC has no

programmatic need to obtain such data. The petitioner's second ancillary item was the premature shutdown of nuclear power plants. NRC addressed this concern in earlier rulemaking published on June 19, 1996; 61 FR 39278 (i.e., 10 CFR 50.82(c)). This rule provides that the NRC would address the status of decommissioning funding and schedule for the accumulating of any shortfall of funds for plants which did not operate for their full terms on a case-by-case basis. The third ancillary comment was to require proportional owners to account for increased spent fuel storage costs should a high level waste storage facility be unavailable. This issue has been addressed by the NRC in 10 CFR 50.54(bb) (Waste Confidence Rulemaking), in which reactor licensees are required to "submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository."

Lastly, the petitioner discussed two issues relating specifically to Allegheny Electric Cooperative and PPL Susquehanna, LLC, viz. low-level waste disposal and the adequacy of Allegheny's decommissioning funding. The NRC addresses the minimum funding for waste disposal issue in the above mentioned NUREG-1307, Revision 9, which was just published in September 2000. Also, as the NRC has indicated in its review of biennial decommissioning funding status reports, "There is no evidence that the nuclear energy industry as a whole, or any particular facility or licensee are failing to accumulate sufficient funds for decommissioning." Therefore, the NRC staff has no indication that Allegheny's decommissioning funding is inadequate.

The petitioner has touched on many issues of concern to the public as the electric generation industry restructures itself as a result of rate deregulation. However, the NRC staff

believes that the petitioner's concerns have been addressed in the 1998 decommissioning rulemaking completed on September 22, 1998 (63 FR 50465) as well as in the NRC's overall regulatory framework. Thus, in sum, the petitioner has not provided any new significant information that would cause NRC to grant any portion of the petition. Also, the petitioner has not raised any issues that were not considered in that rulemaking. For the foregoing reasons, the NRC concludes that this petition should be denied.

For reasons cited in this document, the Commission denies the petition.

Dated at Rockville, Maryland, this ___ day of _____, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission