

Mr. Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112

SUBJECT: PETITION FOR RULEMAKING TO AMEND FINANCIAL ASSURANCE
REQUIREMENTS FOR DECOMMISSIONING NUCLEAR POWER REACTORS

Dear Mr. Epstein:

I am responding to your petition for rulemaking, docketed on January 3, 2000, in which you requested that 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, (2) modify and strengthen current nuclear decommissioning accounting requirements for proportional owners, and (3) 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.

The NRC published a notice of receipt of the petition and request for public comment in the May 12, 2000 (65 FR 30550), issue of the *Federal Register*. Subsequently, the NRC received comments from nine commenters. NRC has analyzed the petition and public comments and has decided to deny the petition. A summary of the Commission's reasoning is provided below.

For the first of your three requests, the Commission notes that your request to require uniform reporting and recordkeeping for all "proportional owners" of nuclear generating stations (defined in the petition as partial owners of nuclear generating stations who are not licensees) is moot as all entities with an ownership interest in a commercial nuclear power plant are NRC licensees. Therefore, the co-owners are already required to comply (and have complied) with the reporting and recordkeeping requirements. As a result, the NRC finds no need to act on this portion of the petition.

Your second request was for the NRC to modify and strengthen its nuclear decommissioning accounting requirements for proportional owners. As stated above, proportional owners are considered licensees by the NRC. Further, in 10 CFR § 50.75(f), every power reactor licensee is required to file a biennial decommissioning funding status report beginning in March 1999. The 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." Also, the requirements of §50.75 and §50.82 also provide for licensees to submit up-to-date

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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.

Your third request was for the NRC to 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. 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. 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.

Your petition also raised certain ancillary issues in addition to these requested actions. A summary of the commenters' statements on these issues, and the staff's proposed resolution of them, is contained in the attached draft *Federal Register* notice.

The Commission considered the issues raised by your petition in its rulemaking effort completed on September 22, 1998 (63 FR 50465). The petition 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.

A detailed discussion of the Commission's reasoning in this matter is contained in the enclosed notice of Denial of Petition for Rulemaking, that will be published in the *Federal Register*.

Although this petition is denied, as evidenced by our recent rulemaking activity in this area, we appreciate your concern for assuring proper funds for decommissioning nuclear power reactors.

Sincerely,

Annette Vietti-Cook
Secretary of the Commission

Enclosure: Notice of Denial of
Petition for Rulemaking

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