

July 13, 2001

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

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 "... all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shut down their units." Also, 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.

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 does not have the legal authority to require such action under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other Federal statute. 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 NRC's response to them, is contained in the attached draft *Federal Register* notice. In addition, a detailed discussion of the Commission's reasoning in this matter is contained in the enclosed notice of Denial of Petition for Rulemaking, which will be published in the *Federal Register*.

Although this petition is denied because we believe our regulatory requirements are sufficient, we appreciate your concern for assuring proper funds for decommissioning nuclear power reactors.

Sincerely,

/RA/

Annette Vietti-Cook

Enclosure: Notice of Denial of Petition  
for Rulemaking

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](mailto: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 below.

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. All co-owners are required to be co-licensees, subject to all NRC regulations, including those with respect to decommissioning reporting. See Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 198-201 (1978). Thus, this issue is moot, because the remedy sought by the petitioner is already in place.

Second, 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 licensees 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 (SECY-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 provide that licensees are 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, co-owners are already providing information on the status of their decommissioning funds. Based on the review of these status reports in 1999, the NRC concludes that the NRC's accounting requirements are currently sufficient to provide adequate protection of public health and safety.

Third, 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 concludes 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 other issues that, while not part of the three requested remedies, prompted responses by commenters. The first is the issue of non-radiological costs, about which the petitioner is concerned because NRC does not require licensees to provide estimates of such costs. Some commenters stated that the NRC has no authority to require licensees to return facilities to a "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 report that indicates that Yucca Mountain remains a viable site for spent fuel storage.<sup>1</sup>

The petitioner also raised two specific issues relating to Allegheny Electric Cooperative and PPL Susquehanna, LLC, namely issues relating to 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. With respect to the funding adequacy issue, Allegheny submitted its required report in March 1999 and in response to a request for clarification, resubmitted it in May of that year. After review of the resubmitted report, NRC had no follow-up concerns. 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 finds this issue moot because the Commission requires all co-owners to be co-licensees. Therefore, under 10 CFR § 50.75, the co-owners are already required to comply with the reporting and recordkeeping requirements. In addition, as discussed below, the NRC has determined that all licensees, including co-owners, complied with section 50.75(f)(1) by submitting initial decommissioning status reports in March 1999. The NRC staff issued an assessment of the

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<sup>1</sup>"Viability Assessment of a Repository at Yucca Mountain," U.S. Department of Energy (DOE-RW-0508), December 1998, page 36.

reports (SECY-99-170, July 1, 1999) which indicated that “. . . all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shut down their units.” 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 licensees and are, therefore, required by 10 CFR 50.75(f) to file a biennial decommissioning funding status report. The NRC staff has determined that licensees are complying with the reporting and recordkeeping requirements. As mentioned, the NRC staff issued a positive assessment of the reports (SECY-99-170, July 1, 1999). In addition, the requirements of §50.75 and §50.82 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 does not have the legal authority to require such action under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other Federal statute. 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 regulatory

requirement that licensees 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. See 61 FR 39278 (promulgating 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) (originally adopted in the 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 addressed the minimum funding for waste disposal in 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, “. . . all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shutdown their units.” Therefore, the NRC 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 believes that the petitioner's concerns have been addressed in the 1998 decommissioning rulemaking, Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, completed on September 22, 1998 (63 FR 50465), as well as in the NRC's overall regulatory framework. Thus, 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 13th day of July, 2001.

For the Nuclear Regulatory Commission.

***/RA/***

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Annette Vietti-Cook,  
Secretary of the Commission.