

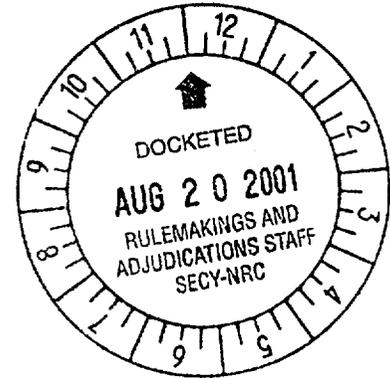


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DOCKET NUMBER
PROPOSED RULE **50**
(66FR 29244)

AUG 13 2001
L-2001-187

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff



**Re: Florida Power & Light Company Comments
Proposed Rule – Decommissioning Trust Provisions
And Draft Regulatory Guide DG-1106
66 Fed. Reg. 29244 (May 30, 2001)**

Dear Ms. Vietti-Cook:

Florida Power & Light Company (FPL), the licensee for the St. Lucie Nuclear Plant, Units 1 and 2, and the Turkey Point Nuclear Plant, Units 3 and 4, hereby submits the following comments on the above-referenced notice of proposed rulemaking. For the reasons set forth below, FPL respectfully suggests that the Nuclear Regulatory Commission (NRC) withdraw the notice of proposed rulemaking. FPL believes that existing regulations issued by the NRC, Internal Revenue Service (IRS), and state regulatory agencies are more than adequate to protect the public health and safety, and that the proposed rulemaking is duplicative of existing requirements and would add unnecessary regulatory burden without a corresponding safety benefit. The proposed rule is also inconsistent with the NRC's regulatory burden reduction initiative.

Lack of a Public Health and Safety Basis for the Proposed Rule

The NRC has not articulated specific health and safety reasons to impose new requirements on decommissioning trust agreements. There is no evidence that a licensee has lacked adequate funds to safely complete the decommissioning process. In order to amend existing trust provisions to fit these new requirements, and to impose additional NRC review over expenditures from decommissioning trusts, licensees will have to expend resources to address a problem that has yet to occur. There is no basis at this time for additional regulatory requirements, as they do not address a specific public health and safety need.

Moreover, pursuant to 10 CFR 50.75(f)(1), each power reactor licensee is currently required to report its decommissioning funding levels to the NRC every two years. Such reports can serve as an early warning indicator to the NRC that there may be a shortfall in decommissioning funding in a particular case. Such reports already give the NRC time to fashion an appropriate remedy in order to protect public health and safety. Additional requirements are not justified by any industry experience.

Effects of Deregulation on Decommissioning

In support of the proposed rulemaking to impose new requirements on decommissioning trust agreements, the NRC asserts that the rulemaking is necessary in response to recent deregulation efforts that might decrease oversight of the decommissioning process. However, the majority of

nuclear power plant licensees are, and will remain for some time, subject to regulation and oversight by state utility commissions and/or the Federal Energy Regulatory Commission. The fact that such regulation will continue undermines the stated need for the proposed rule. Additionally, the proposed NRC requirements may conflict with certain state ratemaking requirements relating to decommissioning.

Imposition of the Proposed Rule Would Result in Unnecessary Regulatory Burden

Imposition of new regulatory requirements in the decommissioning area also conflicts with the NRC's efforts to reduce unnecessary regulatory burden. As stated in the Commission's Strategic Plan, Fiscal Year 2000 - Fiscal Year 2005, one of the NRC's performance goals is to reduce unnecessary regulatory burden on licensees. For the reasons stated herein, FPL suggests that this rule is not consistent with the NRC's effort to identify activities that would reduce unnecessary regulatory burden. (See 66 Fed. Reg. 22134 (May 3, 2001).)

Specific aspects of the proposed rule are addressed below:

- The scope of the proposed rule is not clear. The proposed rule does not articulate whether the amendments are intended to apply to all nuclear decommissioning trusts (qualified and non-qualified), or whether the amendments are intended to apply to trusts that accumulate funds for expenses not within the NRC definition of "decommissioning." The proposed rule is also not clear whether it is intended to apply to licensees operating in deregulated environments, or those that remain under state rate regulation, or both.
- The proposed amendment to Section 50.75(h)(1)(iii) that would require that no disbursement may be made from the trust without prior notice to the NRC would be extremely burdensome on licensees and is unnecessary.
 - The current NRC restrictions on disbursements from decommissioning trust funds (10 CFR 50.82(a)(8)) provides NRC with more than adequate control over the use of such funds. Under existing requirements, 97 percent of the trust funds are not available for disbursement until the licensee has submitted the post shutdown decommissioning activities report and the site-specific cost estimate.
 - The Florida Public Service Commission (FPSC), which retains ratemaking jurisdiction over FPL's operations, has approved FPL's decommissioning funding collections. The FPSC orders also permit funding of amounts applicable to spent fuel storage and other greenfield costs, which are not contained in the NRC's definition of "decommissioning" (10 CFR 50.2; 10 CFR 50.75(c) n.1). Additional NRC requirements regarding the use of these funds would hinder FPL's ability to access and utilize these funds as approved by the FPSC and would unnecessarily intrude on local ratemaking functions that are the exclusive province of state governments.
 - The proposed rule is also duplicative of Internal Revenue Code requirements and IRS implementing regulations, which place additional restrictions on the use of qualified nuclear decommissioning trusts. Existing IRS requirements are sufficient to protect the NRC's interest in the proper use of decommissioning funds.

- Finally, if read literally, prior NRC approval would be required for each disbursement or payment from the trust for decommissioning. This would impose a significant regulatory burden on licensees and on the NRC by effectively creating a new licensing process for disbursement approvals for decommissioning funds, without a public health and safety justification for the NRC's involvement. The proposed regulation contains no standards that would guide licensees and the staff as to whether a disbursement is permissible. Such a requirement could also have a negative financial impact on decommissioning project management, where labor and resources may be staged and ready to begin work, and the licensee incurs delay charges while the NRC decides whether to authorize a disbursement of funds.
- The proposed amendment to Section 50.75(e) would require that the trust must be with an entity that is an appropriate State or Federal government agency or whose operations are regulated by a State or Federal Agency. It is not clear what this amendment would actually require, who would qualify as an appropriate agency, and what role that agency would have in administration of the decommissioning trust. This amendment would also effectively preclude the use of an insurance product, currently permitted under the NRC's decommissioning rule (10 CFR 50.75(e)(1)(iii)), to satisfy decommissioning funding requirements. Many of the insurance companies that underwrite the current insurance pool for operating reactors are domiciled outside of the United States for tax reasons. It is not clear why there should be a requirement that only companies regulated by State or Federal agencies can be trustees for decommissioning purposes, when such a requirement does not apply to insurers who are used to satisfy financial assurance requirements for operating reactors.
- The proposed Section 50.75(h)(1)(i)(A) would prohibit the investment of decommissioning trust funds in any mutual fund that invests in a company that might have an interest in a nuclear unit. The proposed standard that is easily violated if the fund manager purchases shares in a mutual fund that in turn is holding a single share of stock in a company with an interest in a nuclear plant. Placing such restrictions on fund managers is not practical, and there is no clear connection to protection of the public health and safety. Any final rule should permit a de minimis investment in otherwise prohibited mutual fund investments.
- The proposed requirement Section 50.75(h)(1)(B) that would require that investments be "investment grade" appears to be unnecessary in light of the proposed requirement that the investment advisor adhere to a "prudent investor" standard. In any case, FPL suggests that this provision be revised to mandate the "investment grade" standard to apply at the time of purchase and not require immediate sale of the interest at the time of downgrade.
- The proposed Section 50.75(h)(1)(i)(D) that would prohibit the licensee or its affiliates from accepting day-to-day management direction of the fund is overly burdensome. A licensee may be able to perform these functions in a most effective manner. This requirement would simply increase costs without providing any added protection of the public health and safety.

- The proposed Section 50.75(h)(1)(ii) that would require prior notice to the NRC before any material amendments are made to the trust is also overly burdensome. The current regulations do not require NRC review of decommissioning trust agreements. There are also no standards that provide guidance as to whether a particular trust amendment is “material.” Requiring the approval of an amendment to the original trust agreement is an unnecessary burden without a corresponding safety benefit.
- The NRC’s backfitting rule, 10 CFR 50.109, requires the Commission to perform a cost-benefit analysis of the impacts resulting from the imposition of new NRC regulatory requirements. In the regulatory analysis accompanying the proposed rule, the NRC declines to perform a backfit analysis by citing the use of the “adequate protection” exception to the rule (10 CFR 50.109(a)(4)(ii)). The NRC has not articulated why existing rules fail to ensure adequate protection. There is not a single example cited of a licensee who lacked financial assurance to complete decommissioning in a safe and timely manner, nor is there any analysis of how the NRC could more effectively ensure the availability of adequate funds for decommissioning in a more efficient and less restrictive manner. For this reason, NRC’s use of the “adequate protection” exception in place of performing a backfit analysis is inconsistent with the backfitting rule.
- The rule contains no detail concerning the schedule for implementation. It is not clear when trust agreements would have to be revised or investments conformed to implement the proposed requirements.
- The draft Regulatory Guide contains guidance that is inconsistent with the rule. Section 2.2.8 of the Regulatory Guide would prohibit a licensee from crediting the two percent rate of return beyond the period of expected operation into the safe-storage period. This draft guidance conflicts with 10 CFR 50.75(e)(1)(i) and (ii), which permit crediting the two percent rate of return through the decommissioning period, which includes safe storage, final dismantlement, and license termination. Regulatory guidance should not be used to revise a regulation.

We appreciate the opportunity to comment on the proposed rulemaking. Please contact us if there are questions concerning FPL’s comments.

Sincerely yours,

for 
J. A. Stall
Senior Vice President, Nuclear
and Chief Nuclear Officer