

**PR 20, 30, 40, 50, 70 and 72
(73FR03811)**



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

DOCKETED
USNRC

November 5, 2008 (11:42am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

November 4, 2008

The Honorable Annette L. Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission,
Washington, DC 20555-0001,
ATTN: Rulemakings and Adjudications Staff

Re: NRC Docket No. RIN 3150-AH45: Comments Submitted by the State
of New York Concerning the NRC's Proposed Rulemaking to Amend 10
C.F.R. Parts 20, 30, 40, 50, 70 and 72 to Require Certain Changes in
Decommissioning Planning

Dear Secretary Vietti-Cook:

The Office of the Attorney General of the State of New York on behalf of the People of the State of New York submits this letter in further support of its comments to the above-referenced proposed rulemaking, which were submitted May 8, 2008. Based on a public notice on the Commission's website (NRC ADAMS accession number ML082960390), the State of New York understands that this rulemaking matter will be subject to additional public discussion with NRC program staff at an upcoming November 5, 2008 meeting at the Commission's offices in Rockville, Maryland. In advance of that public meeting, the Office of the Attorney General wishes to provide to the Commission supplemental information that has become available to the Office only in the last three weeks – well after the May 8 deadline.

In its May 8 comments, the State of New York argued that the proposed rule does not ensure adequate funding for the decommissioning of operating power reactors. *See Comments Submitted by the State of New York (May 8, 2008), at 20-23 (NRC ML081340325).* Recently disclosed industry decommissioning cost estimates confirm the State's comments. Approximately three weeks ago, Entergy, the owner of seven power reactors in New York, Vermont, Massachusetts, and Michigan, abandoned a confidentiality claim and produced to the parties in a New York State Public Service Commission proceeding various decommissioning cost estimates for those seven facilities. These cost estimates show the disparity between the NRC's funding requirement, which is derived from a simple arithmetic formula based on the production capacity of a reactor, and the industry's own decommissioning estimates.

Template = SECY-067

SECY-02

Using the three Indian Point reactors and associated facilities as an example, Entergy estimated in February 2008 that it will cost between \$2,191,059,000 and \$2,464,262,000 to decommission Indian Point.¹ However, as of the close of 2007, there was only \$1,086,710,000 on hand in the three Indian Point decommissioning trust funds.² In short, Entergy's decommissioning cost scenarios recognize that the company had only *half* of what could be required to decommission the Indian Point reactors and associated facilities and properties.

There can be no doubt that the proposed rule, by continuing to rely upon an outdated formula that does not take into account real environmental conditions (not to mention equity market fluctuations) fails to provide for the availability of adequate decommissioning funds.

The State of New York respectfully requests that the Commission accept and consider this newly-available information. Since the Commission Staff will convene a public meeting concerning the rulemaking on November 5, 2008 to "discuss comments provided by NEI during the public comment period" and receive comments from the public, it would also be appropriate to consider this supplemental information.

Respectfully submitted,

s/

Janice A. Dean
John J. Sipos
Assistant Attorneys General
Office of the Attorney General
120 Broadway, 26th Floor
New York, NY 10271
212-416-8459

cc: Kevin O'Sullivan, NRC Staff

¹ TLG Services, Inc., Decommissioning Cost Analysis for the Indian Point Energy Center, Document E11-1583-002 (Feb. 2008), at 29.

² Letter, John F. McCann to U.S. Nuclear Regulatory Commission, Decommissioning Fund Status Report, ENOC-08-00028 (May 8, 2008), Attachments, I, II, and III (totaling columns entitled "Amount accumulated to the end of the calendar year preceding the date of the report" for Indian Point Unit 1 (\$271.19M); Unit 2 (\$347.2M); and Unit 3 (\$468.32M)). This summary aggregates the three decommissioning trust funds for each of Indian Point's three separate reactors and their associated facilities; however, OAG notes that significant financial and legal differences exist among the three separate trust funds for each of the three units. OAG also notes that equity markets experienced a significant decline in the first nine months of calendar year 2008, so that it is likely that there is less cash on hand in the decommissioning trust funds as of today.

Secy

From: John Sipos [John.Sipos@oag.state.ny.us]
Sent: Tuesday, November 04, 2008 6:47 PM
To: Kevin OSullivan; NRCExecSec Resource; Secy
Cc: Janice Dean
Subject: 2008.11.04 NYS Supp Ltr re Decomm Rulemaking; RIN 3150 AH45
Attachments: 2008.11.04 NYS supp ltr re decomm RIN 3150 AH45.pdf

Dear Secretary Vietti-Cook, NRC Rulemaking Staff, and Mr. O'Sullivan:

Enclosed please find a brief supplemental letter from the Office of the Attorney General of the State of New York regarding the rulemaking proceeding concerning decommissioning regulations, NRC RIN 3150 AH45. The Office understands that NRC Staff will convene a public meeting on November 5 to review certain issues that have arisen in the rulemaking proceeding as well as for statements or questions of others attending the meeting.

If you have any difficulty accessing the attached document, please contact us.

Respectfully submitted,

Janice Dean
John Sipos
Assistant Attorneys General
State of New York

dated: November 4, 2008

Received: from mail1.nrc.gov (148.184.176.41) by TWMS01.nrc.gov
(148.184.200.145) with Microsoft SMTP Server id 8.1.291.1; Tue, 4 Nov 2008
18:46:42 -0500

X-Ironport-ID: mail1

X-SBRS: 4.8

X-MID: 32393786

X-IronPort-Anti-Spam-Filtered: true

X-IronPort-Anti-Spam-Result:

AggBAEtEEkMa5iTIGdsb2JhbACBdpIhAQEBAQkLCAkRBbdEg1M

X-IronPort-AV: E=Sophos;i="4.33,546,1220241600";
d="pdf?scan'208";a="32393786"

Received: from spam1.oag.state.ny.us ([12.107.152.147]) by mail1.nrc.gov with
ESMTP; 04 Nov 2008 18:46:39 -0500

Received: from smtpgw2.oag.state.ny.us (alb-g3.oag.silvernet [172.16.100.57])
by spam1.oag.state.ny.us (8.13.8/8.13.8) with ESMTP id mA4NkbM5017328; Tue, 4
Nov 2008 17:46:37 -0600

Received: from GATEWAY_B-MTA by smtpgw2.oag.state.ny.us with Novell_GroupWise;
Tue, 04 Nov 2008 18:46:36 -0500

Message-ID: <49109885.8FA3.004A.0@oag.state.ny.us>

X-Mailer: Novell GroupWise Internet Agent 7.0.3

Date: Tue, 4 Nov 2008 18:46:30 -0500

From: John Sipos <John.Sipos@oag.state.ny.us>

To: <Kevin.OSullivan@nrc.gov>, <NRCExecSec@nrc.gov>, <secy@nrc.gov>

CC: "Janice Dean" <Janice.Dean@oag.state.ny.us>

Subject: 2008.11.04 NYS Supp Ltr re Decomm Rulemaking: RIN 3150 AH45

MIME-Version: 1.0

Content-Type: multipart/mixed; boundary="=_Part29017DC6.0_="

X-MessageScreenMessageID: 1225842399.715921.1549.1263108107

X-MessageScreenContentScore: Score of 0 assigned to Content

X-MessageScreenUCEScore: Score of 0 assigned to UCE

X-MessageScreen: Analyzed by IntelliReach MessageScreen(tm)

Return-Path: John.Sipos@oag.state.ny.us