



Public Service  
Company of Colorado  
P.O. Box 840  
Denver CO 80201-0840

March 19, 1990  
Fort St. Vrain  
Unit No. 1  
P-90071

A. Clegg Crawford  
Vice President  
Nuclear Operations

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555

ATTN: Mr. Seymour H. Weiss, Director  
Non-Power Reactor, Decommissioning and  
Environmental Project Directorate

Docket No. 50-267

**SUBJECT: REQUEST FOR EXEMPTION FROM 10 CFR 50.82 REGARDING PERIOD  
OF DECOMMISSIONING FUND ACCUMULATION**

REFERENCES: (1) NRC letter, Erickson to Crawford, dated October 5,  
1989 (G-89338)  
(2) PSC letter, Crawford to Weiss, dated June 30, 1989  
(P-89228)  
(3) PSC letter, Crawford to Weiss, dated February 15,  
1990 (P-90039)

Dear Mr. Weiss:

In Reference 1, the NRC notified Public Service Company of Colorado (PSC) that the Financial Plan to accumulate decommissioning funds, proposed in Reference 2, would not provide suitable assurance that the funds necessary to accomplish decontamination and dismantlement activities would be available at the end of the projected SAFSTOR period in 2043.

As an alternative to the plan proposed by PSC in Reference 2, the NRC, recognizing the premature nature of the termination of power operations at Fort St. Vrain, recommended an alternative period of funds accumulation which would allow PSC to accumulate the necessary funds on or before the original scheduled license termination in 2008. Such a period would allow suitable time to accumulate the necessary funds to accomplish dismantlement and decontamination, scheduled to commence in 2044 following the SAFSTOR period. PSC, in Reference 3, submitted a revised Financial Plan which incorporated this recommended NRC period of funds accumulation.

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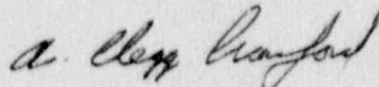
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In accordance with 10 CFR 50.12, PSC requests approval of the attached exemption request which, if approved, will allow PSC to accumulate decommissioning funds beyond the termination of operations, as specified in 10 CFR 50.75(e)(1) and 50.82(c)(1).

If you have any questions related to this exemption request, please contact Mr. M.H. Holmes at (303) 480-6960.

Very truly yours,



A. Clegg Crawford  
Vice President  
Nuclear Operations

ACC:CRB/cb

Attachment

cc: Regional Administrator, Region IV  
ATTN: Mr. T.F. Westerman, Chief  
Projects Section B

Mr. Robert Farrell  
Senior Resident Inspector  
Fort St. Vrain

Mr. Robert M. Quillin, Director  
Radiation Control Division  
Colorado Department of Health  
4210 East 11th Avenue  
Denver, CO 80220

ATTACHMENT  
REQUEST FOR EXEMPTION  
FROM 10 CFR 50.82(c)  
FOR THE  
FORT ST. VRAIN NUCLEAR GENERATING STATION

**I. REQUEST FOR EXEMPTION**

Pursuant to 10 CFR 50.12(a), Public Service Company of Colorado (PSC) hereby applies to the Nuclear Regulatory Commission (NRC) for an exemption from the provisions of 10 CFR 50.82(c) which require funding of decommissioning expenses prior to termination of operations.

10 CFR 50.82(c)(1) states:

*"(c) Decommissioning plans which propose an alternative that delays completion of decommissioning by including a period of storage or long-term surveillance must provide that -*

*(1) funds needed to complete decommissioning be placed into an account segregated from licensee assets and outside the licensee's administrative control during the storage or surveillance period ..."*

Contrary to the above, PSC has not accumulated the full amount of funds required to accomplish Fort St. Vrain decommissioning activities. In Reference 3 and as part of this exemption request, PSC proposes that PSC be allowed to accumulate funds over the remaining term of the operating license (due to expire on September 17, 2008), such that all funds necessary for SAFSTOR and eventual decommissioning of Fort St. Vrain will be available in the trust fund on or before the original expiration date of the operating license.

**II. BACKGROUND**

Fort St. Vrain was permanently and prematurely shut down on August 29, 1989, prior to the projected end of the operating license (expiration date: September 17, 2008). At the time of shutdown and to date, PSC has not accumulated the full amount of funds required to accomplish decommissioning activities. As noted in Reference 3, PSC has based its financial planning on the SAFSTOR decommissioning alternative, which will delay the completion of decommissioning until approximately 2046.

In Reference 2, PSC originally proposed accumulation of funds over the entire SAFSTOR period. The NRC Staff review of PSC's proposed plan is documented in Reference 1, in which the NRC Staff recommended that PSC revise the Decommissioning Financial Plan to accumulate all funds by the end of 2008.



In Reference 3, PSC submitted a revised Decommissioning Financial Plan in which the Dismantlement Period funds will be accumulated in the trust fund on or before the end of 2008 and will remain designated for decontamination and dismantlement activities. Additional funds will be accumulated in the trust fund on or before the end of 2008 which will be used to pay for annual SAFSTOR expenses during the SAFSTOR period. These Dismantlement Period and SAFSTOR funds will continue to accrue interest in the trust fund after 2008.

### III. REGULATORY PROVISIONS

#### A. GENERAL EXEMPTION CRITERIA

The following paragraphs provide PSC's justification that this exemption request is consistent with the general exemption criteria of 10 CFR 50.12(a)(1).

##### Authorized by Law:

The requested exemption is fully authorized by law. The method of funding proposed by PSC does not conflict with the Commission's statutory mandate. 10 CFR 50.82(a) allows case-by-case treatment of decommissioning plans (including financial plans) for plants shut down prior to July 1988. It is within the Commission's discretion to extend this treatment to Fort St. Vrain.

##### No Undue Risk to the Public Health and Safety:

The requested exemption presents no undue risk to the public health and safety. The revised PSC Financial Plan provides for accumulation (on or before the end of 2008) of the total funds necessary to decontaminate, dismantle, remove components and accomplish related decommissioning activities. Based on the existence of this adequate funding, PSC will have the necessary financial resources to maintain the plant in a safe condition with adequate safeguards, so as to ensure there is no undue risk to the public health and safety.

##### Consistent with the Common Defense and Security:

The requested exemption is consistent with the common defense and security. No action proposed would implicate, much less adversely impact, those considerations.

#### B. SPECIAL CIRCUMSTANCES

The following paragraphs provide PSC's justification that special circumstances exist for granting the requested exemption, as set forth in 10 CFR 50.12(a)(2)(ii), (iii) and (vi).

Application is not Necessary to Achieve Underlying Purpose:

Granting the requested exemption will continue to serve the underlying purpose of the Commission's decommissioning rule. In this instance, special circumstances exist such that strict compliance with the rule is not necessary to achieve the underlying purpose of the rule.

The purpose of the rule is to provide reasonable assurance of the timely availability of funds for decommissioning. The Commission established acceptable mechanisms which would provide funding to occur during the operating life of the facility, without relying on funding during a storage period which normally would not commence for several years in the future.

However, as with the facilities which happened to have shut down prior to July 1988, PSC has not had an opportunity to collect all funds for decommissioning prior to cessation of operations. The revised Financial Plan submitted by PSC in Reference 3 provides reasonable assurance of the availability of funds for decommissioning at such time as the funds will be needed, as well as alleviates NRC staff concerns by ensuring that these funds will be fully accumulated at a point well in advance of the eventual decontamination and dismantlement activities.

Additionally, the NRC has recognized that strict adherence to the decommissioning rule in early decommissioning situations is unnecessary to serve the underlying purposes of the rule. Granting the requested exemption would be consistent with the Commission's intent in this area. Specifically, the Commission noted in the Supplemental Information accompanying the final rule that plants which had already shut down at the time the rule was promulgated should be afforded leeway in applying the rule, in particular provisions regarding the "time period for accumulating funds not set aside during operation ...". In these circumstances, the Commission contemplated case-by-case consideration of licensees' funding plans for decommissioning.

PSC's proposed Decommissioning Financial Plan provides reasonable assurance of the timely availability of funds for decommissioning. Moreover, this exemption is consistent with Commission intent with respect to early decommissioning situations. Thus, requiring full funding prior to permanent cessation of operations is unnecessary to achieve the underlying purpose of the rule.

Undue Hardship:

Due to the premature shutdown of Fort St. Vrain prior to the expiration of the operating license in 2003, requiring full funding of decommissioning prior to commencing the SAFSTOR period would cause undue financial burden on the Company and its shareholders.



The decommissioning rule is founded on the presumption that licensees will have a reasonable period of time over the remaining operating life of the plant to accumulate decommissioning funds. In particular, the rule allows licensees to accumulate funds over the entire remaining life of the plant [10 CFR 50.75(e)(1)(ii)]. In the Supplemental Information accompanying the decommissioning rule, the Commission indicated that the rule is intended to provide mechanisms by which licensees are to provide for decommissioning funding, without creating inordinate financial burdens on licensees (See 53 FR p.24033, col 3). Compelling PSC to collect a significant portion of decommissioning funds immediately would impose not only a significantly disparate financial burden on PSC, but would be far in excess of any burden contemplated by the Commission when the decommissioning rule was adopted.

In addition, this burden would be imposed almost exclusively on the present PSC stockholders. As a result of a 1986 Settlement Agreement between PSC, the Colorado Public Utilities Commission (CPUC) and consumer groups, Fort St. Vrain was removed from the rate base and a limit of \$11.5 million was established for recovery of additional decommissioning costs over five years (ending in 1991). The removal of Fort St. Vrain from the regulatory rate base has left PSC shareholders responsible for the majority of decommissioning costs. Such a hardship represents special circumstances as contemplated in 10 CFR 50.12(a)(2)(iii).

As the purpose of the rule is to assure sufficient financial support for decommissioning activities, PSC's Decommissioning Financial Plan satisfies this intent, while maintaining the present and future financial and operational integrity of the Company for its customers and shareholders. Requiring PSC to accumulate these funds immediately would impose an excessive and unnecessary financial burden on shareholders.

Circumstances Not Originally Considered:

For plants ceasing operation prior to July 27, 1988, 10 CFR 50.82(a) specifies that the Commission will review the financial plans for decommissioning on a case-by-case basis. As noted previously, the decommissioning rule is founded on the presumption that licensees would have a reasonable period of time over the remaining operating life of the plant to accumulate decommissioning funds. In particular, the rule allows licensees to accumulate funds over the entire remaining life of the plant.

Fort St. Vrain, however, represents an instance of premature decommissioning not originally considered in the formulation of the decommissioning rule, to which the NRC Staff has acknowledged that application of the full funding requirement would be inappropriate. The adoption of the new funding requirements approximately one year

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before permanent termination of Fort St. Vrain operations on August 29, 1989, did not allow PSC sufficient time or opportunity to accumulate the full amount of funds necessary to complete all anticipated decommissioning activities.

Fort St. Vrain is in a situation analogous to those plants which shut down prior to the promulgation of the decommissioning rule. It should be noted that Fort St. Vrain was shut down prior to the deadline for submitting Decommissioning Financial Plans. For all practical purposes, Fort St. Vrain is in the same decommissioning situation contemplated by the Commission for plants which shut down prior to July 1988 and should be afforded similar treatment.

#### **IV. CONCLUSION**

Based on the information presented in Sections II and III of this request, the Decommissioning Financial Plan proposed by PSC for Fort St. Vrain is in accordance with the general exemption criteria of 10 CFR 50.12(a)(1), and special circumstances exist which justify submittal of an exemption request, as required by 10 CFR 50.12(a)(2). Therefore, this exemption to the requirements of 10 CFR 50.82(c) is fully justified, and PSC requests that the Commission grant this exemption request.

#### REFERENCES

1. NRC letter, Erickson to Crawford, dated October 4, 1989 (G-89338); Subject: "Fort St. Vrain, Decommissioning Financial Plan and Preliminary Decommissioning Plan - Request for Additional Information".
2. PSC letter, Crawford to Weiss (NRC), dated June 30, 1989 (P-89228); Subject: "Fort St. Vrain Preliminary Decommissioning Plan".
3. PSC letter, Crawford to Weiss (NRC), dated February 15, 1990 (P-90039); Subject: "PSC Response to NRC Question on the Decommissioning Financial Plan".