



POLICY ISSUE

(Notation Vote)

October 19, 2020

SECY-20-0095

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: DENIAL OF PETITION FOR RULEMAKING TO ACCESS THE
DECOMMISSIONING TRUST FUND FOR THE DISPOSAL OF LARGE
COMPONENTS (PRM-50-119; NRC-2019-0083)

PURPOSE:

The staff requests Commission approval to deny a petition for rulemaking (PRM) associated with access to the decommissioning trust fund (PRM-50-119) and publish a notice of the denial in the *Federal Register*.

BACKGROUND:

Gerard P. Van Noordennen, on behalf of EnergySolutions, LLC, filed a petition with the U.S. Nuclear Regulatory Commission (NRC) on February 22, 2019 (Agencywide Documents Access and Management System Accession No. ML19079A293), requesting that the NRC revise the definition of *Decommissioning* in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.2, "Definitions," and amend 10 CFR 50.82, "Termination of License," to allow access to the decommissioning trust fund to pay for the cost of the disposal of major radioactive components before the permanent cessation of operations at nuclear power plants. The NRC docketed the petition on March 4, 2019, and assigned it Docket No. PRM-50-119.

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The NRC published a notice of docketing and request for public comment in the *Federal Register* on June 12, 2019 (84 FR 27209). The public comment period closed on August 26, 2019. The NRC received a total of six public comment submissions from the general public and industry, with five commenters supporting the petition and one commenter opposing the petition.

DISCUSSION:

The petitioner requested that the NRC revise the definition of *Decommissioning* in 10 CFR 50.2 and amend 10 CFR 50.82 to allow access to the decommissioning trust fund to pay for the cost of the disposal of “major radioactive components” before the permanent cessation of operations at nuclear power plants. The petitioner suggested that granting the petition will remove unnecessary burden on licensees that store major radioactive components on their sites during plant operations because they do not have funds available and cannot use decommissioning funds to pay for the disposal of these components.

The petitioner stated that the removal and disposal of components during operations could be considered as activities that would be part of the decommissioning process; therefore, decommissioning funds could be used for the disposal of the components before the permanent cessation of operations if excess funds can be shown to exist. The petitioner also stated that the onsite storage of major radioactive components leads to unnecessary regulatory burden for their maintenance and monitoring and to the potential for worker exposure.

The staff recommends denying the petition because current regulations adequately address this issue. Under the current regulatory framework, a licensee may access the decommissioning trust fund to dispose of major radioactive components by requesting reimbursement of the cost when submitting the decommissioning cost estimate. Alternatively, a licensee also may request an exemption in accordance with 10 CFR 50.12, “Specific exemptions,” to permit withdrawal from the decommissioning trust fund prior to decommissioning. Although the Commission has stated that trust fund withdrawals for disposal of major radioactive components would be granted only “in extraordinary circumstances” (73 FR 62222; October 20, 2008), the staff reviews each exemption request based on the merits of the facts provided in the request.

While the petitioner noted that only “excess” funds from the decommissioning trust fund would be used to pay for the disposal of major radioactive components, the staff notes that calculation of the excess would be based on economic projections. Therefore, changes in economic conditions combined with withdrawals from the trust fund could potentially result in future shortfalls in the decommissioning trust fund. However, the staff envisions certain circumstances, which could be stated in an exemption request (a large projected excess in decommissioning trust funds compared to a site-specific cost estimate, inclusion of the expense in a site-specific cost estimate, evidence that funds have been collected or set aside for the activity in the comingled decommissioning trust fund, and availability of rate collection to correct a shortfall in radiological decommissioning funding, etc.) that may lead to the approval of the particular request, based on the totality of the facts. These circumstances are site-specific and dependent on the unique financial status of each licensee.

The staff believes it would be difficult to develop generally applicable requirements to address the use of decommissioning trust funds for this purpose and therefore, more efficient to review such requests on a case-by-case basis. Therefore, the staff considers an exemption to be an adequate means for licensees to request a withdrawal from their trust fund for the disposal of major radioactive components. If the staff sees an increase in exemption requests to withdraw

decommissioning funds prior to decommissioning, then the NRC could reconsider whether addressing the issue through rulemaking would reduce the need for exemptions and be more efficient for the agency. Such reconsideration will include any experience and insights the staff has gained in evaluating exemption requests at that time.

Additionally, the staff notes that some licensees have pursued an alternative method of funding the disposal of major radioactive components. Specifically, licensees have established “sub-accounts” in their decommissioning trust funds. For rate-regulated licensees, these sub-accounts are typically funded by rate collections authorized for the purpose by public utility commissions after these licensees establish that the portion of the trust dedicated to radiological decommissioning is sufficiently funded in accordance with NRC regulations. While non-rate-regulated (i.e., merchant) licensees do not have access to rate collection, they may still fund such sub-accounts through alternate means or request a reallocation of funds across their decommissioning trust fund accounts using the 10 CFR 50.12 exemption process. These sub-accounts, whether funded separately or through re-allocation if approved, are not regulated by the NRC and, therefore can be used at the discretion of the licensee at any time during operations or decommissioning.

RECOMMENDATION:

The staff recommends that the Commission deny PRM-50-119 because the petition does not raise a significant safety or security concern. The requested amendments are not necessary because access to the decommissioning trust fund for the disposal of large components is adequately covered by existing regulations in 10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities.”

The staff requests the Commission’s approval to publish the *Federal Register* notice (Enclosure 1) denying PRM-50-119. The enclosed letter for signature by the Secretary of the Commission (Enclosure 2) informs the petitioner of the Commission’s decision to deny the petition. The staff will also inform the appropriate congressional committees of the Commission’s decision.

RESOURCES:

This paper does not address any new commitments or resource implications.

COORDINATION:

The Office of the General Counsel has reviewed this package and has no legal objection to the denial of the petition.

Margaret M. Doane Digitally signed by Margaret M. Doane
Date: 2020.10.19 17:00:54 -04'00'

Margaret M. Doane
Executive Director
for Operations

Enclosures:

1. *Federal Register* notice
2. Letter to the Petitioner

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