

BEFORE THE
NUCLEAR REGULATORY COMMISSION
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Financial Assurance Requirements for)
Decommissioning Nuclear Power Reactors)

10 CFR Part 50
RIN 3150-AD41

COMMENTS OF
THE NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS

DOCKET NUMBER
PROPOSED RULE PR 50
(61FR15427) (40)

The National Association of Regulatory Utility Commissioners (NARUC) hereby submits its comments in response to the Advance Notice of Proposed Rulemaking (Notice) issued by the Nuclear Regulatory Commission (NRC or the Commission) in the above-captioned proceeding on April 1, 1996. 61 Fed. Reg. 15427-15430 (April 8, 1996).

NATURE OF THE PROCEEDING

By the Notice, the Commission has announced its intention to consider amending 10 CFR §§ 50.2, 50.75 and 50.82 to (1) require that electric utilities licensed to operate nuclear reactors provide assurances that the full estimated cost of decommissioning will be available through a guarantee mechanism if a licensee is not subject to rate regulation by a State regulatory commission (with respect to its retail power sales) and/or the Federal Energy Regulatory Commission (with respect to wholesale sales) and does not have a guaranteed source of income; (2) allow electric utility licensees to assume a positive rate of return on decommissioning funds accrued during the safe storage period; and (3) require periodic utility reporting of the status of decommissioning funds. The Commission has raised these issues at this time in response to actions underway in the States and at the FERC to allow or require greater competition in retail and wholesale markets for electricity.

INTEREST OF THE NARUC

The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the fifty States engaged in the economic and safety regulation of carriers and utilities. The mission of the NARUC is to serve the public interest by seeking to improve the quality and effectiveness of public regulation in America. More specifically, the NARUC contains the State officials charged with the duty of regulating the retail rates and services of electric utilities operating within their respective jurisdictions. These officials have the obligation under State law to assure the establishment and maintenance of utility services as may be required by the public convenience and necessity, and to ensure that such services are provided at rates and conditions which are just, reasonable, and nondiscriminatory for all consumers.

COMMENTS

Introduction:

The NARUC deeply appreciates this opportunity to respond to the issues and questions raised by the Commission in its Notice. In this period of ongoing changes in the economic regulation of the electric utility industry, the Association, its officers and members have been pleased to act as a liaison with the NRC on the issue of reactor safety in a restructured utility industry. We commend the Commission for its efforts to reach out to State regulators through the public briefings it has convened, attendance of NRC commissioners and staff at NARUC meetings, and more informal contacts. For our part, we have found the increased State/NRC dialogue that has occurred over the last year to be invaluable.

The NARUC supports the Commission's decision to reconsider its regulatory policies in light of growing competition in wholesale and retail electric markets. Clearly, to the extent NRC policies to ensure safe operation and decommissioning of power reactors were premised on traditional "rate base/rate of return" methodologies, they should be reexamined as market-based pricing and policies promoting customer choice are implemented. Moreover, the NARUC supports the Commission's decision to take a cautious approach to reforming its regulatory policies because we believe that the industry restructuring process will evolve over at least the next decade through a process of experimentation, particularly at the State level where the bulk of utility sales occur and costs are recovered.

In the Notice, the Commission has asked commentors to respond to a series of questions concerning how the restructuring process could effect the ability of utilities to decommission their power reactors. The remainder of these comments address these questions.

A. Timing and Extent of Electric Utility Industry Deregulation

QA1: What is the likely timetable for industry restructuring and deregulation?

AA1: Unless Congress enacts legislation that requires the establishment of competitive retail markets by a date certain, the restructuring process will unfold on a State-specific basis during the next 5 to 10 years. While the process appears to be accelerating in some States, it is important to keep in mind that the pro-competitive restructuring of the natural gas and telecommunications industry (which in neither case has been fully completed) has taken 12 to 18 years thus far.

Therefore, it is now difficult to determine when, how, or even if, the industry will be completely restructured. While the FERC's recent issuance of Order Nos. 888 and 889 has begun restructuring the wholesale electric market (which represents approximately 10 percent of industry sales), the remaining retail sales markets will be addressed through the collective decisionmaking of 51 State legislatures and regulatory commissions.

QA2: Will the electric utility industry go through several phases as it responds to deregulation and other competitive pressures? If so, what will be the likely major changes in business structure that may occur in each phase? Will rates remain regulated at the retail distribution level, with deregulation occurring for generation and transmission? Will retail wheeling become widespread and lead to deregulation of all sectors of the electric utility industry? Or will rates remain regulated at the retail distribution level, with deregulation occurring within the generation and transmission sectors? What will likely be the final structure of the electric utility industry, assuming either partial or full deregulation?

AA2: Yes, the industry will go through several phases as it prepares for competition. Over the last several years the utilities have reduced work forces, renegotiated expensive contractual obligations, reduced regulatory assets, and lowered overall operating costs. However, it is difficult, if not impossible, to determine how the industry may look in a competitive environment. Most likely deregulation will occur in only the generation sector with transmission and distribution service subject to federal and state jurisdiction respectively. Corporate divestiture into separate generation, transmission, and distribution companies may occur. State-specific market and political pressures will affect the timing of each phase of this process.

QA3: Some States appear to oppose deregulation. Will they be able to maintain their opposition if neighboring States deregulate? What will be the industry structure if some States deregulate more than others? Can a "hybrid" system exist effectively?

AA3: If some States implement retail competition, neighboring States may find they are compelled to consider similar actions, possibly due to legal (such as Commerce Clause litigation) and economic factors.

Competitive systems are frequently hybrid systems of some sort, which is not necessarily a negative factor. Indeed, during the transition period, a hybrid system may have to exist. The rate of industry reforms may proceed at different speeds in different States. Accordingly, if the NRC chooses to proceed with a rulemaking in this docket, the rules should accommodate nuclear units subject to traditional regulation and the nuclear units in the competitive markets to facilitate a smooth transition.

B. Stranded Costs

QB1: How will restructuring affect large baseload plants that currently receive rate relief to cover construction costs or have a portion yet to be phased into the rate base? Specifically, what is the probability that and degree to which these costs will be recoverable should a nuclear power plant be deemed to be non-competitive because of high construction costs? What will be the source of operating, maintenance, and capital improvement funds should such a nuclear generator decide to continue operations? What

will be the source of funds to prematurely and safely shut down an uneconomic plant? Are transmission access or other surcharges to cover stranded costs likely?

AB1: The probability is high that regulatory mechanisms will be developed to replace cost recovery procedures established through "traditional" regulatory procedures. These mechanism (e.g. wires charges, non-bypassable customer fees, exit fees) may be different, but the probability of recoverability under these mechanisms is no less than what it would have been under conventional regulation. The mechanism chosen, and its associated equitable allocation of cost responsibility between customers and shareholders, will be determined through the inevitable give and take of the restructuring process, if one is implemented.

C. Nuclear Financial Qualifications and Decommissioning Funding Assurance

QC1: If nuclear plants are shut down prematurely, how will licensees who can no longer pass costs through to ratepayers provide for a shortfall of decommissioning funds?

AC1: The question implies that ratepayers alone will be responsible for all costs, including decommissioning funding. However, simply because the nuclear utilities have traditionally been monopolies with a captive customer base has never guaranteed cost recovery. Rather, the State commissions have evaluated the reasons why and how costs have been incurred to verify prudence and reasonableness. In the event a unit is shut down prematurely (before the licensee has collected sufficient funds to cover the costs of decommissioning), the reasons for the premature shut down should dictate how the necessary funds will be collected. If the unit is shut down due to mismanagement by the licensee, the State commission will evaluate how the uncollected cost of decommissioning the unit should be equitably recovered from customers and shareholders.

QC2: At what point does an operator of a nuclear power plant cease to be a "utility" as defined in § 50.2 of the NRC's regulations?

AC2: A nuclear power plant operator ceases to be a "utility" when the nuclear unit no longer provides service to retail or wholesale requirements customers at rates set by a separate regulatory authority.

QC3: If an electric utility reorganizes itself, including divesting parts of itself, so that the remaining entity operating a reactor is no longer regulated by a rate-setting State or Federal body, or will cease to be regulated by a rate-setting State or Federal body if the reactor ceases operation, would it be appropriate to require financial assurance for the decommissioning costs in full prior to NRC approval of such reorganizations? Such assurance could take the form of self-guarantee, parent company guarantee, certification by the rate-regulating entity, or other financial surety mechanism to cover the unfunded decommissioning costs. Should the NRC require additional assurance for adequate funds

for safe operation and decommissioning in anticipation of deregulation? Should the NRC require, as a condition of approval of certain reorganizations involving the transfer of control of a nuclear power plant, that newly created organizations or holding companies sign a binding agreement that holds them jointly liable for decommissioning costs associated with that nuclear power plant? What would be the impact of such actions?

- AC3: Yes, the NARUC believes that the NRC should consider seeking assurances in advance using the methods proposed, but not complete funding up front. Further, the NARUC believes that responsibility for demonstrating financial assurance for decommissioning costs should be borne by the entity which owns and operates the unit.

These assurances provide a high likelihood that adequate decommissioning funds would be available. The owning entity, whether regulated or unregulated, should have the incentive to properly manage and operate the unit. The relatively high amount of investment in nuclear facilities creates enormous pressure to keep the units running safely and efficiently to avoid an NRC-imposed shutdown.

- QC4: Should the NRC require a licensee to provide a reasonable assurance of the availability of funds for decommissioning by imposing a minimum level of net worth, cash flow, or other financial measure (similar to 10 CFR Part 30, Appendices A and B)? If below the minimum levels, the licensee would no longer be allowed to accumulate decommissioning costs over remaining facility life, but would need a guarantee that funds would be available for decommissioning through various financial measures. What financial measures would be effective and reasonable?

- AC4: The NARUC does not believe it is necessary for the NRC to impose a minimum level of financial viability for determining whether a licensee should continue to be allowed to accumulate funding over the remaining life of the unit to cover the cost of decommissioning. The NARUC believes the NRC rules presently in place adequately address the issue of financial assurance on the part of licensees to meet their obligation to fund the decommissioning of their nuclear units.

- QC5: Would PUCs and FERC be willing to certify that licensees under their jurisdictions, both electric utility and Part 50 licensees other than electric utilities, would be allowed to collect sufficient revenues through rates to complete decommissioning funding?

- AC5: It should be understood that no current commission can bind a future commission at either the State or Federal level. However, commissions may assure that licensees under their jurisdiction would be allowed the opportunity to collect sufficient revenues through rates to complete decommissioning funding. If underfunding occurs, the cause for and the prudence and reasonableness of the underfunding would need to be reviewed. A determination would be made regarding equitable recovery of the additional costs from customers and shareholders.

QC6: What would be the impact if the NRC required licensees to accelerate collection of decommissioning funds such that decommissioning funding for all plants would be complete within 10 years (or some other time period)?

AC6: An acceleration of collection so that decommissioning funding would be complete within 10 years would cause an immediate upward pressure to increase rates to allow companies to earn their authorized return. Increased accrual rates would distort the economics of nuclear power and thereby worsen the competitive position of these units in the short term, as well as create inter-generational inequities. Also, after the 10 year period those utilities would be in a more competitive position vis a vis utilities that were still collecting decommissioning costs in rates.

QC7: Assume that licensees have accumulated funds that are determined to be adequate based on current estimates of decommissioning costs. If these estimates turn out to be low far in the future (for example, if final dismantlement occurs after a 50-year safe storage period), how will underfunding be remedied? What measures should the NRC consider for obtaining assurance of funds for such situations? Should the NRC require larger contingency factors in estimates to cover such situations?

AC7: The possibility of underfunding can be diminished by revising decommissioning estimates based on regularly conducted site-specific decommissioning studies (at least once every 5 years -- preferably every 2 years). More frequent reviews should be conducted in the later years as license termination approaches. If underfunding occurs, the reasons for the underfunding should be reviewed. If the underfunding resulted from events the company had no control over, then it would seem appropriate that customers bear the risk of that underfunding. If, however, the underfunding resulted from mistakes or oversights of the company, it would then seem appropriate for the underfunding to be equitably recovered from shareholders as well.

Since the fundamental objective of a decommissioning trust fund is to ensure the availability of adequate financial resources, the NRC could require each company to have an investment strategy for its trust fund that ensures each dollar contributed to the fund is available at the time of decommissioning. For example, companies could be required to ensure that the funds maintain the purchasing power of the contributions by earning at least the rate of inflation as measured by the Consumer Price Index over each determined review period. If the company's investment earnings, net of taxes and all other administrative costs, did not meet or exceed the CPI for the period, it would then be reasonable for the NRC to require the utility to cover this shortfall with additional monies to keep the trust fund whole with respect to inflation.

The NRC should not require large contingency factors in estimates to cover underfunding situations. A contingency is defined in the American Association of Cost Engineers' Cost Engineers' Notebook as a "specific provision for unforeseeable elements of cost within the defined project scope; particularly important where previous experience

relating estimates and actual costs as shown that unforeseeable events which will increase costs are likely to occur." Such unforeseeable events include bad weather, labor strikes, equipment failure, and other unforeseen circumstances. Contingencies are not a means to "cushion" estimates or to account for inflation. They are used solely to assure that adequate funds are available in the event that something unpredictable as well as costly occurs while in the process of decommissioning a nuclear unit.

QC8: Would it be feasible for the nuclear industry to develop a captive insurance pool to pay for decommissioning funding shortfalls that result from premature decommissioning? Could such a pool be structured similarly to Nuclear Mutual Limited (NML) and Nuclear Electric Insurance Limited (NEIL), who currently insure on-site property damage and replacement power of member utilities?

AC8: Yes, a captive insurance pool is possible. However, participation might be limited because of differences in existing decommissioning funds and differing state commission policies.

QC9: If PUC or FERC oversight is either substantially limited or eliminated, are there any other options for financial assurance of decommissioning that the NRC should consider?

AC9: No. Financial assurance is currently required by the NRC regardless of State commission involvement. Further, competitive pressures should provide incentives to companies to adequately ensure their decommissioning obligations. Additionally, the Financial Accounting Standards Board released an Exposure Draft regarding the accounting for certain liabilities related to closure or removal of long-lived assets. Among other things, the proposed Statement established guidance for the recognition and measurement of nuclear decommissioning obligations. It requires that these obligations be recognized as a liability on the company's financial statements. The disclosure of this liability and all of the assumptions made in its determination should provide information in assessing the nature, timing, and extent of the company's commitment of its future resources.

The assessment would include an evaluation of the extent the assets of the company are currently dedicated or restricted to use in satisfying the closure or removal obligations. Regardless of State commission and FERC oversight, companies will be required to follow this Statement, if approved, beginning after December 5, 1996.

D. Decommissioning Funding Assurance and a Federal Government Licensee

QD1: Section 50.75(e)(3)(iv) provides that an electric utility which is a Federal Government licensee need only provide assurance in the form of a statement of intent indicating that decommissioning funds will be obtained when necessary. Since a Federal utility licensee will likely be confronted with many of the same new competitive pressures as non-

Federal utilities, the question arises, should the regulations continue to permit the provision of a statement of intent as the method by which these licensees provide financial assurance for decommissioning. There is, for example, no Federal law which clearly provides that the Federal Government would pay the Tennessee Valley Authority's financial decommissioning obligations should TVA be unable to do so. Does this fact or any other factors militate for or against allowing Federal utility licensees to continue to use statements of intent as the method by which financial assurance for decommissioning is provided?

AD1: The NARUC urges the NRC to be consistent in any application of a revised financial assurance mechanism. To the extent that revised rules result in an increase in rates for private nuclear utilities and not the federal units, it creates a competitive disadvantage for the privately owned utilities that must be overcome in a deregulated world. Consistency does not necessarily mean a uniform approach for all utilities but rather a menu of options that are available to all utilities.

E. Status of Decommissioning Trust Funds During Safe Storage Period

QE1: What real rate(s) of return should the NRC allow licensees to use as credit for earnings on the decommissioning trust funds during the extended safe storage period?

AE1: The NARUC urges the NRC to allow individual State regulatory agencies to decide the issue of what real rate(s) of return a licensee should be allowed to use as credit for earnings on the decommissioning trust funds during the extended storage period.

QE2: What time period(s) should the NRC allow licensees to use in estimating the credit for earnings on the decommissioning trust funds during the extended safe storage period?

AE2: Here too, the NARUC urges the NRC to allow individual State regulatory agencies to address the issue of what time period(s) a licensee should be allowed to use in estimating the credit for earnings on the decommissioning trust funds during the extended storage period.

F. Reporting on the Status of Decommissioning Funds

QF1: What information should the NRC require to be included in the periodic reporting requirements?

AF1: The NRC should require the same information as will be required by the Proposed FASB Statement regarding accounting for certain liabilities related to closure or removal of long-lived assets. A company reporting a liability for its closure or removal obligations will be required to disclose the following information:

- a. a description of the closure or removal obligations;
- b. the liability for closure or removal obligations recognized in the financial statements;
- c. all assumptions used in estimating the future cash outflows and the liability recognized in the financial statements, including the
 - (1) current cost estimate of closure or removal obligations,
 - (2) estimated long-term rate of inflation used in computing the liability,
 - (3) estimated total future cost of closure or removal obligations,
 - (4) discount rate, and
 - (5) general estimated timing of closure or removal activities.
- d. the funding policy for closure or removal obligations;
- e. the fair value of assets, if any, dedicated to satisfy the closure or removal obligations;
- f. the effects on the reported liability and capitalized costs of closure or removal activities resulting from changes in the current reporting period in the estimated future costs of closure or removal activities;
- g. the individual components of the costs of closure or removal activities recognized in the statement of operations (depreciation, changes in present value, and investment earnings on any fund assets) and the total of these costs; and,
- h. the caption or captions in the statement of operations in which the costs in (g) are aggregated if those costs have not been presented in a separate caption or reported parenthetically on the face of the statement.

QF2: How often should the NRC require licensees to report on the status of decommissioning funding?

AF2: Regardless of the amount or type of regulation, it appears that FASB will require licensees to report the status of decommissioning funding in their annual financial statements. The NRC should require no additional reporting.

CONCLUSION

The NARUC appreciates this opportunity to provide its views on the issues raised by the Notice. We pledge our continued efforts to work with the Commission, the nuclear industry and all affected parties to ensure that changes in the structure and operation of the electric utility industry in no way compromise the safe operation of nuclear facilities, nor jeopardize their safe

decommissioning. We look forward to a continuing dialogue with the NRC on these and related issues as the restructuring process evolves.

Respectfully submitted,

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