

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Baran
SUBJECT: SECY-21-0033: Request for an Exemption from the Decommissioning Schedule Requirements for Shutdown Reactors at the GE Hitachi Vallecitos Nuclear Center

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in STARS

Yes

No

Signature

7/22/21

Date

**Commissioner Baran’s Comments on SECY-21-0033,
“Request for an Exemption from the Decommissioning Schedule Requirements for
Shutdown Reactors at the GE Hitachi Vallecitos Nuclear Center”**

At GE Hitachi’s Vallecitos Nuclear Center in California, there are two shutdown power reactors (the Vallecitos Boiling Water Reactor and the Experimental Superheat Reactor) and one shutdown nonpower reactor (the General Electric Test Reactor). The operational nonpower Nuclear Test Reactor is also onsite. NRC regulations require power reactors to complete decommissioning within 60 years of shutdown and require nonpower reactors to complete decommissioning without significant delay. The Vallecitos Boiling Water Reactor therefore would need to be decommissioned by September 9, 2025. GE Hitachi has requested an exemption from the decommissioning deadline regulations in order to decommission the three shutdown reactors at the same time as the operating reactor, potentially decades later than would otherwise be required. The NRC staff recommends granting the exemption.

In my view, the requested exemption from established regulatory requirements would not be in the public interest for several reasons.

First, it would be safer to complete decommissioning within the timeframes established by the regulation than to delay the necessary demolition and remediation activities. The “NRC staff identified concerns with the structural integrity and aging management” of the three shutdown reactors, especially for the Vallecitos Boiling Water Reactor containment building, “which has noticeable cracking and spalling of the concrete structures; corrosion of the steel elements; and a history of moisture condensation, water intrusion, and water pooling in the basement.”¹ In fact, “[t]he staff’s safety concern is that this building is structurally compromised to the extent that an unmonitored release of residual radioactivity could occur.”² The other two reactors “also show evidence of water intrusion and minor corrosion of structural elements.”³ Due to these risks, “delayed decommissioning would require increased NRC oversight of the shutdown facilities.”⁴ Proceeding with decommissioning, however, would not raise comparable safety concerns. According to the paper, the NRC “staff believes that the licensee can safely decommission the three shutdown reactors by 2025 while the [Nuclear Test Reactor] and other facilities remain in operation.”⁵ Moreover, “there will be no appreciable safety benefits in dose rate or source term reduction by completing decommissioning past the regulatory timeline.”⁶

Second, the requested exemption would create a major loophole in the regulatory requirement to decommission a power reactor within 60 years of shutdown. As the NRC staff acknowledges, granting the exemption would set a “precedent for other sites that have both shutdown and operational reactors that expect the operational reactors to continue to operate significantly past the permanent cessation of operations of the shutdown reactors.”⁷ Such sites include Dresden, Fermi, Millstone, and Peach Bottom. Setting this precedent would be inconsistent with one of the basic goals of the ongoing power reactor decommissioning rulemaking – moving away from regulating by exemption in this area. It would also be at odds with the views of many stakeholders who submitted comments on the decommissioning

¹ SECY-21-0033 at 5.

² *Id.*

³ *Id.*

⁴ *Id.* at 8.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 6.

rulemaking. No comments on that rulemaking supported extending the decommissioning deadline beyond 60 years.⁸ On the other hand, numerous states, local communities, and other stakeholders expressed a strong interest in prompt decommissioning.⁹ In the specific case of Vallecitos, the State of California has expressed concern about exceeding the 60-year deadline and opposes the exemption request.¹⁰

Finally, GE Hitachi has not met the standard for an exemption under § 50.82, which provides the criteria for issuing an exemption to the specific decommissioning deadline requirements at issue. The staff has explicitly determined that the request to delay decommissioning did not meet the exemption criteria as it “was not necessary to protect the public health and safety because there is no shortage of radioactive waste disposal space offsite, and there are no other nuclear facilities at the site whose safety or security might be affected by decommissioning activities at the shutdown reactors, or other similar site-specific considerations that could not be reasonably mitigated.”¹¹ Allowing a decommissioning delay under the more general exemption provision of § 50.12 would render the specific criteria of § 50.82 meaningless and effectively write the tailored provision out of the regulation.

For these reasons, the staff should deny the exemption request (Option 2).

⁸ See *id.* at 7.

⁹ See, e.g., Comment of California Energy Commission (June 13, 2017) at 11 (ADAMS Accession No. ML17165A378); Comment of New York State Energy Research and Development Authority (June 13, 2017) at 2 (ADAMS Accession No. ML17165A386); Comment of Windham Regional Commission (June 8, 2017) at 6, 13 (ADAMS Accession No. ML17165A204); and Comment of Conference of Radiation Control Program Directors, Inc. (March 17, 2016) at 23 (ADAMS Accession No. ML16077A279).

¹⁰ See Letter from David Hochschild, Chair, California Energy Commission, to NRC (Feb. 2, 2021).

¹¹ SECY-21-0033 at 4.