

# PUBLIC SUBMISSION

<b>As of:</b> 9/13/22, 3:55 PM
<b>Received:</b> August 30, 2022
<b>Status:</b> Pending Post
<b>Tracking No.</b> 17g-0a4t-vfd6
<b>Comments Due:</b> August 30, 2022
<b>Submission Type:</b> Web

**Docket:** NRC-2015-0070

Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning

**Comment On:** NRC-2015-0070-0229

Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning

**Document:** NRC-2015-0070-DRAFT-2312

Comment on FR Doc # 2022-03131

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## Submitter Information

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## General Comment

On behalf of itself and its affiliates, Entergy Operations, Inc. appreciates the opportunity to comment on the subject proposed rule. Entergy Corporation is an integrated energy company engaged primarily in the electric power production and retail electric distribution operations. Entergy's utility segment generates, transmits, distributes, and sells electricity in a four-state service area that includes portions of Arkansas, Mississippi, Texas, and Louisiana, including the City of New Orleans. EOI currently operates four nuclear power plants in three states. Through its subsidiaries, Entergy currently operates four nuclear plants with a total of five reactors in three states: Arkansas Nuclear One Units 1 and 2, Grand Gulf Nuclear Station, River Bend Station, and Waterford Steam Electric Station, Unit 3. Other Entergy affiliates owned and operated five sites that have permanently ceased operations and have been sold for the purpose of accelerated decommissioning: Big Rock Point Independent Spent Fuel Storage Installation ("ISFSI"), Indian Point Energy Center Units 1, 2, and 3, Palisades Nuclear Plant, Pilgrim Nuclear Power Station, and Vermont Yankee Nuclear Power Station. Entergy has gained significant experience in transitioning multiple plants from operations to various stages of decommissioning.

Entergy appreciates the NRC Staff's work on developing the phased approach to decommissioning and establishing a logical framework to step down requirements in multiple areas previously covered by license amendments and exemptions, commensurate with the reduction in radiological risk as the fuel decays, cools in the spent fuel pool, and is moved to dry storage. The framework may benefit from consideration of one additional step – in which major decommissioning activities have been completed, but spent fuel remains onsite.

In particular, Entergy supports the Staff's proposed graded approach for reducing current requirements applicable to operating reactors in the areas of Emergency Preparedness, Physical Security, Cyber Security, and Onsite Liability and Onsite Property Insurance coverage appear generally consistent with Staff's prior exemption approvals. Entergy also supports the proposed modifications of decommissioning funding assurance reporting requirements for power reactors and ISFSIs.

However, in other areas the proposed rule risks generating uncertainty and burden without benefit to the public, the agency or licensees. Significant among these are the proposed new requirement for formal approval of a license amendment and license condition for the licensee's Irradiated Fuel Management Plan and the failure to include a general authorization for use of excess nuclear decommissioning trust funds for irradiated fuel management and site restoration. Further, a number of the specific questions (addressed in Attachment 1) suggest a significant revision of the NRC's longstanding decommissioning regulatory framework, including a requirement for site characterization prior to the submittal of a decommissioning cost estimate, abandonment of the formula amount of 10 CFR 50.75(c) for setting targets for accumulation of the bulk of funds during plant life, and NEPA review at the start of decommissioning.

Entergy recognizes and commends the significant effort by the Staff over many years to develop this proposed rule. Entergy encourages the NRC Staff to focus its efforts on the original goals of the rulemaking – i.e., to improve upon and make the process for transitioning from operations to decommissioning more efficient, open, and predictable by reducing the reliance on licensing actions – and to finalize the rulemaking expeditiously so that licensees transitioning to decommissioning might benefit from the rulemaking.

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## **Attachments**

Attachment 1 - Entergy Responses to Transition to Decommissioning Questions

Attachment 1

Entergy's Responses to Particular Questions in Transition to Decommissioning Proposed Rule

	Question	Entergy's Comments
1.	<p><u>PSDAR Approval</u>  <b><i>As part of this rulemaking, should the NRC require approval of the PSDAR, a site-specific environmental review, and hearing opportunity before a licensee undertakes any decommissioning activity? Other than NRC review and approval of the PSDAR, are there other activities that could help to increase transparency and public trust in the NRC regulatory framework for decommissioning? Should the rule provide a role for the states or local governments in the process? What should that role be? What are the advantages or disadvantages of various roles? Please provide an explanation for your response.</i></b></p>	<ul style="list-style-type: none"> <li>• Entergy agrees with the Staff's conclusion that formal approval of the PSDAR would provide no benefit to the public and may be counterproductive by delaying a licensee's ability to timely undertake decommissioning activities.</li> <li>• NRC's current process has been effective for many years and many reactors. Entergy is aware of no examples to the contrary that would justify the cost and delay of the formality of an additional environmental review and adjudicatory proceeding.</li> <li>• NRC's current mechanisms for decommissioning oversight have been proven, including Staff reviews of financial reporting and inspection of decommissioning activities.</li> <li>• Current financial reviews in the context of license transfers for decommissioning already provide additional transparency into and scrutiny of the PSDAR in the context of the agency's review of financial qualification and decommissioning funding assurance.</li> <li>• A license amendment for a PSDAR is not necessary or legally appropriate in that the licensee is not seeking new authority not already provided for in the license and regulations.</li> </ul>
2.	<p><u>Timeframe for Decommissioning</u>  <b><i>What are the advantages and disadvantages of requiring prompt decontamination rather than allowing up to 60 years to decommission a site? As part of its review of a PSDAR, what are the advantages and disadvantages of NRC evaluating and making a decision about the timeframe for decommissioning on a site-specific basis?</i></b></p>	<ul style="list-style-type: none"> <li>• Licensees should retain the flexibility to consider all factors impacting the radiological decommissioning of their sites without additional arbitrary or artificial constraints not connected to the public health and safety.</li> <li>• The Commission should clarify the process for licensees to seek commission approval for greater than 60 years, particularly as it relates to multiple units on a single site. Public health and</li> </ul>

		<p>safety may be best served by deferral of decommissioning of individual units in favor of site decommissioning.</p>
3.	<p><u>Insurance</u>  <b><i>What are the advantages and disadvantages of requiring the existing level of insurance to be maintained until all spent fuel is in dry cask storage (Level 3)?</i></b></p>	<ul style="list-style-type: none"> <li>• The bases for existing exemptions relying on conservative calculations of the window for a potential zircalloy fire following shutdown, and compensatory measures to provide additional assurance of continuity of spent fuel pool cooling are well established and substantially reduce offsite and onsite risks. The reduction at Level 2 is commensurate with that risk reduction and should continue to be available to licensees.</li> <li>• The Staff already has sufficient flexibility to consider the implications for high burnup fuels and higher enrichments.</li> </ul>
4.	<p><u>Site-Specific Cost Analysis</u>  <b><i>What are the advantages and disadvantages of requiring a full site investigation and characterization at the time of shutdown? What are the advantages and disadvantages of eliminating the formula and requiring a site-specific cost estimate during operations?</i></b></p>	<ul style="list-style-type: none"> <li>• The question mistakenly presumes that a full site investigation and characterization are somehow necessary in advance of preparation of a site-specific decommissioning cost estimate (“DCE”). That is not the case.</li> <li>• NRC regulations already require full site investigation at the appropriate time – i.e., at license termination. The proposed rule identifies no flaws with previous DCEs or expected benefits warranting the additional cost and delay of requiring a that a full site investigation be conducted before license termination.</li> <li>• The Staff has significant ability to address any unique, emergent or site-specific concern though guidance on current requirements or through plant-specific review, inspection or enforcement mechanisms.</li> <li>• There is no reason to require moving from a formula amount to a site-specific decommissioning cost estimate earlier than currently required. The formula has worked well for its purpose – the accumulation of the bulk of decommissioning funds.</li> <li>• As a practical matter, the current regulations already create an incentive for licensees to prepare and submit a site-specific</li> </ul>

		<p>DCE as soon as they can meaningfully do so, so that they also can account for experienced performance of the fund and projected growth until decommissioning activity begins.</p>
5.	<p><u>Decommissioning Trust Fund</u>  <b><i>Should the NRC's regulations allow decommissioning trust fund assets to be used for spent fuel management if (1) there is a projected surplus in the fund based on a comparison to the expected costs identified in a site-specific cost estimate and (2) the assets are returned to the fund within an established period of time? What are the advantages and disadvantages of allowing decommissioning trust fund assets to be used for those purposes? What are the advantages and disadvantages of allowing decommissioning trust fund assets to be used for non-radiological site restoration prior to the completion of radiological decommissioning?</i></b></p>	<ul style="list-style-type: none"> <li>• In contrast to the general direction of the proposed rule, NRC's position on this question does not capitalize on the benefit of standardizing now frequently-granted exemptions based on decades of overcollection and growth of nuclear decommissioning trust funds. If a licensee's trust is overfunded, the rule should permit licensees to use those funds for other purposes supportive of and consistent with or in furtherance of decommissioning of the site.</li> <li>• Continuing the process of seeking exemptions continues burdens on licensees and the Staff, contrary to the purpose of the rulemaking.</li> <li>• NRC should not proscriptively require in all cases the return to the trust of funds allowed for irradiated fuel management activities. Unless required in a particular case to assure sufficiency of the trust for radiological decommissioning, NRC should not require that recoveries from spent fuel litigation or settlements be returned to the trust. The NRC's decommissioning financial reporting rules and prohibitions on use of funds such as 10 CFR 50.82(a)(6)(iii) already require preservation of sufficient funds to complete decommissioning.</li> <li>• The use of excess nuclear decommissioning funds for necessary site restoration purposes benefits the public by accelerating the completion of decommissioning. Decommissioning and site restoration activities can efficiently and cost effectively be conducted in parallel if funds are available, thus hastening the public's and the licensee's interest in returning the site to more productive use.</li> </ul>
6	<p><u>Timing of Decommissioning Funding Assurance Reporting</u></p>	<ul style="list-style-type: none"> <li>• The proposed change is consistent with the purpose of the rule in that it minimizes non-beneficial burden on licensees and</li> </ul>

<p><b><i>What are the advantages and disadvantages to extending the reporting frequency from two years to three years? Does this change affect the risk of insufficient decommissioning funding? Please provide an explanation for your response.</i></b></p>	<p>staff associated with frequent reporting and review of information. NRC’s rules at 10 CFR 50.75 and 10 CFR 50.82 ensure a site-specific assessment of the adequacy of decommissioning funds as the plant approaches expected decommissioning. This structure ensures adequate time for the licensee to address any shortfall in funds required for decommissioning.</p> <ul style="list-style-type: none"> <li>• The purpose of the decommissioning funding reporting requirement is assuring the collection of the bulk of funds over a plant’s 40-year lifespan. During the 40-year initial license lifespan, reporting at three-year intervals (13 reports) is more than sufficient.</li> <li>• The extended reporting period from two years to three years appropriately recognizes that licensees are still required to review the status and adequacy of their funds on an annual basis and if necessary, take corrective actions specified in staff guidance.</li> </ul>
<p>7. <u>Exemptions</u>  <b><i>What are the advantages and disadvantages of the current <a href="#">10 CFR 50.12</a> approach to decommissioning-related exemptions? What standard should the NRC apply in determining whether to grant exemptions from the new or amended regulations? What are the advantages and disadvantages of providing an opportunity for the public to weigh in on such exemption requests? Are there other process changes the NRC should consider in determining whether to grant exemptions from the new or amended regulations?</i></b></p>	<ul style="list-style-type: none"> <li>• The requirements of 10 CFR 50.12 have been effective. While the burden reduction of codifying to the maximum extent possible those exemptions frequently used in the transition to decommissioning, there remains purpose to and benefit in retaining the option available under 10 CFR 50.12 for exemptions for the current or revised rule. No general rule can foresee all every factual situation that may present.</li> <li>• While the NRC’s exemption process has been generally effective, staff’s application of the process has sometimes been slow, burdensome and unpredictable. These issues can be addressed with management attention and appropriate guidance to staff. The staff should consider milestone goals for exemption approvals, particularly based on previously-granted exemptions.</li> <li>• No additional burdens should be placed on the currently effective process. No special exemption process is warranted</li> </ul>

		<p>for plants in decommissioning, which present a significantly reduced risk to public health and safety.</p> <ul style="list-style-type: none"><li>• Federal courts have confirmed the Commission’s longstanding position that the public has no generalized right to participation in the NRC exemption process. The Commission already has extended to the public the ability to challenge exemptions that are integral to licensing actions for which hearing opportunities otherwise exist (e.g., use of excess decommissioning trust funds for irradiated fuel management in context of transfers for decommissioning); NRC should continue to follow its longstanding precedent with respect to effective regulation and the law that has developed.</li></ul>
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