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Secretary, U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff

**SUSQUEHANNA STEAM ELECTRIC STATION
COMMENTS REGARDING ERIC JOSEPH EPSTEIN'S
PETITION FOR RULEMAKING
PLA-5217**

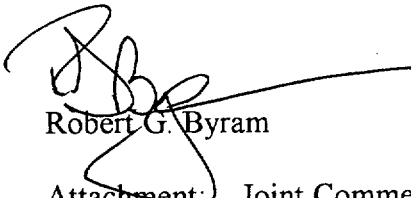
DOCKET NUMBER
PETITION RULE PRM 50-70
(65FR30550)

The purpose of this letter is to transmit joint comments from Allegheny Electric Cooperative and PPL Susquehanna, LLC in response to Eric Joseph Epstein's petition for rulemaking related to financial assurance for decommissioning. Mr. Epstein's petition appeared in the Federal Register, Vol. 65, No. 93, dated Friday, May 12, 2000.

Our comments assert that the NRC should deny the petition for a number of reasons as documented in the attachment. We note that the NRC recently completed a rulemaking on this subject that resulted in a "Final Rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors." The comments conclude that the requirements contained in the Rule are adequate and do not require further change. To the extent the petition requests the NRC to compel prudency reviews, we maintain that such action is not within the jurisdiction of the NRC.

Please direct any questions related to this letter to Mr. T. L. Harpster, Manager – Nuclear Licensing, at 610-774-7504.

Sincerely,



Robert G. Byram

Attachment: Joint Comments of PPL Susquehanna, LLC and Allegheny Electric Cooperative in Response to Eric Joseph Epstein's Petition for Rulemaking Relating to Financial Assurance for Decommissioning

Copy: NRC Region I
Mr. R. G. Schaaf, NRC Project Manager – OWFN
Mr. S. L. Hansell, NRC Sr. Resident Inspector – SSES
Mr. Otto Hofmann, Esquire, General Counsel, Allegheny Electric

Template = SECY-067

SECY-02

Response to Eric Joseph Epstein's Petition for Rulemaking
Relating to Financial Assurance for Decommissioning
(July 26, 2000)

I. INTRODUCTION

PPL Susquehanna, LLC (together with affiliates, PPL) and Allegheny Electric Cooperative (Allegheny) respectfully submit these comments in response to the Nuclear Regulatory Commission's (NRC) request for public comment regarding a Petition for Rulemaking submitted by Eric Joseph Epstein. In its Notice published at 65 Fed. Reg. 30550 (May 12, 2000), NRC requested that members of the public comment on Mr. Epstein's request that NRC initiate a rulemaking relating to financial assurance for the funding of decommissioning. Specifically, Mr. Epstein requests that NRC adopt three measures relating to "proportional partners" or "proportional owners" of nuclear generating stations, presumably referring to non-operating owners of nuclear power reactors. Mr. Epstein recommends that: (1) proportional partners be required every two years to conduct site-specific analyses of decommissioning costs that account for certain factors; (2) the NRC's requirements in 10 CFR § 50.75 regarding Reporting and Recordkeeping for Decommissioning Planning be applied to all partners in nuclear generating stations, including board members of rural electric cooperatives (RECs); and (3) proportional owners be compelled by NRC to conduct prudency reviews.

For the reasons more fully stated below, PPL and Allegheny urge that the NRC decline to change its existing regulations, because they are adequate to address all of those concerns expressed by the Petitioner that are within the NRC's jurisdiction. In fact, NRC conducted an exhaustive review of its requirements relating to financial assurance

for decommissioning funding in a rulemaking that was recently completed and resulted in a "Final Rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors" published in the Federal Register. 63 Fed. Reg. 50480 (Sept. 22, 1998); *see also* 63 Fed. Reg. 57236 (Oct. 27, 1998) (correction of an omission and typographical errors in Final Rule). Significantly, Mr. Epstein did not avail himself of his opportunity to comment on that rule when it was proposed and noticed for public comment. To the extent that Mr. Epstein requests that the NRC compel "prudence reviews" to be conducted, his recommendation must be rejected because the action requested is beyond NRC's jurisdiction. Even if the NRC had jurisdiction, the requested action would be redundant and unnecessary.

Mr. Epstein is properly concerned that the NRC's regulations require that non-operating proportional owners of nuclear power reactors provide adequate financial assurance for the funding of their proportionate shares of future decommissioning expenses, and in fact, the NRC's rules already so provide. Non-operating owners of nuclear power reactors are required to be licensed by the NRC, even if they own only a nominal percentage of a nuclear power plant. Therefore, a municipality, rural electric cooperative, or any other entity owning a share of a nuclear power reactor is necessarily a "power reactor licensee" within the meaning of that term as used in 10 CFR § 50.75. As such, Mr. Epstein's first two recommendations are unnecessary, because NRC's rules already require that non-operating proportional owners of power reactors provide adequate assurance for the funding of decommissioning and that they report the status of such funding to NRC at least every two years in accordance with 10 CFR § 50.75(f). Mr. Epstein's third recommendation, that NRC compel proportional owners to conduct

prudency reviews of undefined dimension, would require NRC to act beyond its jurisdiction and usurp rate-related functions that are properly within the jurisdiction of state public utility commissions (PUCs), the Federal Energy Regulatory Commission (FERC), and the Rural Utilities Service (RUS) and/or usurp the ratemaking functions of municipal utilities, RECs, or other utilities that establish their own rates. Moreover, the facts relating to Susquehanna Steam Electric Station (SSES) on which Mr. Epstein relies in arguing for such action confirm the contrary view – that site specific decommissioning cost studies and the prudence of licensees' actions have been subjected to appropriate review and approval of other competent regulators such as PUCs. Although Allegheny establishes its own rates, these rates are subject to review and approval by the RUS Administrator. *See* 7 CFR § 1717.303(b). If Allegheny's rates ever were inadequate to meet its obligations, the RUS Administrator has authority to act to impose rates sufficient to cover Allegheny's costs. *See* 7 CFR §§ 1717.305, 1707.306.

In Section II.A below, these comments will first address Mr. Epstein's three recommendations. Mr. Epstein also articulates several issues or concerns in support of his recommendations, and some of these issues warrant further comment. Therefore, in Section II.B, these comments will briefly address the following five issues raised by Mr. Epstein: (1) non-radiological decommissioning costs; (2) premature shutdown of nuclear reactors; (3) spent fuel storage and high level waste disposal; (4) low level waste disposal; and (5) the adequacy of Allegheny's decommissioning funding.

II. DISCUSSION

A. Mr. Epstein's Recommendations

1. Biennial Site-Specific Decommissioning Cost Estimates

Mr. Epstein's first recommendation appears to be designed to address his concern that non-operating owners of nuclear plants or "proportional partners of nuclear generating stations" be required to provide financial assurance that they will have adequate funds available to pay their share of decommissioning costs. Mr. Epstein therefore recommends that NRC require each such owner to biennially conduct a site-specific analysis of decommissioning costs, taking into account several factors that might affect the ultimate cost of decommissioning each plant. This action is unnecessary because NRC's rules already require that each "power reactor licensee," including a non-operating licensee, provide financial assurance for decommissioning in a form acceptable to the NRC and in an amount that provides reasonable assurance that adequate funds will be available for the decommissioning of its ownership share of a power reactor. As discussed in greater detail in Section A.2 below, these rules plainly apply to proportional owners of nuclear power reactors such as RECs, municipalities, or any other corporate entity holding a direct ownership interest in a nuclear power plant. Therefore, the only genuine issue implicated by Mr. Epstein's first recommendation is whether or not the existing regulations provide reasonable assurance that adequate decommissioning funding will be available with respect to all licensees.

NRC's rules require that each power reactor licensee provide financial assurance for decommissioning in an amount that is no less than the NRC "formula amount" calculated in accordance with 10 CFR § 50.75(c). Licensees may accumulate funds that exceed this amount based upon their own individual circumstances and their own projections relating to certain factors such as inflation, earnings, and site specific needs (including the areas of concern expressed by Mr. Epstein). However, the "formula

amount" provides an appropriate benchmark amount of decommissioning funding, with adjustments for increased costs for inflation in key categories, to provide reasonable assurance from a safety perspective that licensees are accumulating sufficient funds over time to assure that they will be capable of funding decommissioning. NRC's rules appropriately permit licensees and ratemaking authorities to make independent judgments as to the funds necessary for decommissioning a given plant that go beyond the minimum funding requirements, without imposing burdensome requirements that may be inappropriate for any given licensee. Thus, NRC's rules provide reasonable assurance to protect the public health and safety, without NRC becoming unnecessarily involved in the specific business and ratemaking decisions that must be made by each licensee on a case-by-case basis.

The NRC's minimum requirements are premised upon the fact that additional conservatism is obtained by the nature and quality of the financial assurance required by NRC and the financial qualifications of its licensees. All licensees must either affirmatively demonstrate their financial qualifications, or qualify as an "electric utility," which recovers "the cost of electricity, either directly or indirectly, through rates established by itself or by a separate regulatory authority." 10 CFR §§ 50.2 & 50.33(f). In order to be entitled to accumulate funds over time using the "external sinking fund method" for providing decommissioning financial assurance, a licensee must either recover decommissioning costs through traditional ratemaking regulation (including municipalities, RECs or other state or federal agencies which establish their own rates) or be entitled to collect decommissioning costs through a "non-bypassable charge." 10 CFR § 50.75(e)(1)(ii).

Moreover, "at or about 5 years prior to the projected end of operations," at a time when site-specific decommissioning costs can be more accurately calculated, each licensee is required to submit "a preliminary cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission." 10 CFR § 50.75(f)(2). NRC's regulations also already require that a "site-specific decommissioning cost estimate" be submitted within two years following permanent cessation of operations. 10 CFR § 50.82(a)(8)(iii). Thus, the NRC's current regulations strike an appropriate balance by establishing threshold requirements for the accumulation of decommissioning funding during the operating life of the facility and then imposing more specific requirements that funding be provided for site-specific costs at the time that more specific decommissioning planning is underway.

In its recent rulemaking, NRC considered and rejected suggestions from commenters who argued in favor of the use of "site-specific decommissioning cost as the basis for financial assurance and reporting, even if these estimates are less than the current minimum amounts prescribed in § 50.75." 63 Fed. Reg. at 50468-69. There is simply no basis for the NRC to depart from its current regulatory approach which establishes a minimum level of required decommissioning funding based upon NRC's generic formula amounts, while permitting licensees and their rate-setting bodies to fine-tune their schedules for collecting decommissioning funds based upon site-specific factors and assumptions, as long as such funding exceeds the NRC formula amount.

2. Reporting and Record Keeping Requirements

Mr. Epstein's second recommendation is based upon the legitimate proposition that non-operating owners of nuclear power plants should be subject to the NRC's

regulations in 10 CFR § 50.75 which apply to all "power reactor licensees." ¹ However, it appears to be premised upon the mistaken assumption that a non-operating co-owner of a power reactor is not a "power reactor licensee" as that term is used in 10 CFR § 50.75. Pursuant to longstanding precedent, "NRC views all co-owners as co-licensees who are responsible for complying with the terms of their licenses." "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry," 62 Fed. Reg. 44071, 44077 (Aug. 19, 1997). Thus, any proportional co-owner of a power reactor is required to become an NRC licensee. *See Public Service Company of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 200-201 (1978). There can be little doubt that such co-owner licensees are "power reactor licensees" within the meaning of the term as used in 10 CFR § 50.75, and therefore, the NRC's reporting and recordkeeping requirements for decommissioning planning in 10 CFR § 50.75 already apply to any "partner" in a nuclear generating station owning an interest in the plant.

Mr. Epstein's petition recommends that the requirements of 10 CFR § 50.75 be extended to include "board members of RECs." To the extent this and other statements in the petition might be construed as suggesting that NRC require that shareholders, board members or other non-licensees be held directly responsible for decommissioning funding and/or reporting, any such action would be a significant departure from established principles of corporate law and past NRC practice. In the absence of a case-specific basis to "pierce the corporate veil," NRC should respect the corporate form

1 To the extent Mr. Epstein's petition references provisions of 10 CFR § 50.75 that apply to non-power reactors (*e.g.*, 10 CFR § 50.75(d)), such references are likely inadvertent and should be disregarded.

and decline to extend NRC requirements to such non-licensees. Moreover, it would appear doubtful that NRC has jurisdiction over such non-licensees, and Mr. Epstein suggests no basis for concluding that it does.

3. Prudency Reviews

In his third recommendation, Mr. Epstein suggests that NRC order each proportional owner of nuclear power plants "to conduct a prudency review in order to determine a balanced formula for decommissioning funding and/or taxpayers and shareholders and/or Board Members of Rural Electric Cooperatives." Petition for Rulemaking, page 3 (December 30, 1999). For the reasons discussed above, NRC's existing rules already provide reasonable assurance that all licensees will be able to fund their share of decommissioning costs. Therefore, NRC's current regulations already provide "a balanced formula for decommissioning funding," and there is no basis for imposing additional requirements.

In addition to being unnecessary and inconsistent with NRC's findings in its recent 1998 rulemaking effort, Mr. Epstein's recommendation that NRC order "prudency reviews" would require the NRC to exercise jurisdiction over ratemaking matters that are beyond the scope of its regulatory purview. Significantly, the NRC has no mandate or authority under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other federal statute, to require licensees to review the "prudence" of their decommissioning funding decisions or to itself review prudence issues.

NRC has previously addressed comments suggesting that it become involved in the equitable distribution of decommissioning costs among ratepayers and shareholders,

and it has concluded properly that from NRC's safety perspective "it does not matter whether the source for a licensee's financial assurance is the licensee's ratepayers or its shareholders, but only that the licensee has provided adequate financial assurance for decommissioning." 63 Fed. Reg. at 50477. The prudence of a licensee's decommissioning funding is a matter properly within the jurisdiction of state PUCs, FERC and/or the ratemaking authority of municipal utilities, RECs, and other electric utilities that establish their own rates.

Moreover, the facts upon which Mr. Epstein relies in suggesting that state regulatory proceedings are inadequate to assure appropriate funding prove the contrary point. For example, at page 10 of his petition Mr. Epstein criticizes the site-specific study of decommissioning costs for SSES which was conducted by TLG, a recognized industry expert.² Significantly, Mr. Epstein's criticism is undermined by the fact that detailed decommissioning cost estimates for SSES have been presented and approved by the Pennsylvania Public Utility Commission (PaPUC) on several occasions, including a 1981 PPL rate case, 1983 PPL rate case, 1995 PPL rate case, and 1997 electric utility restructuring case. On each such occasion, the PaPUC conducted an extensive review of the estimates, and in each case it approved the estimate as just and reasonable. To the

2. Mr. Epstein suggests that this study somehow was based entirely upon costs for "small, prototype reactors." To the contrary, the TLG study was a complete decommissioning cost estimate including all of the relevant components of the costs to decommission SSES. The TLG study merely referenced and relied upon certain inputs and experience at a variety of other reactors, including but not limited to, experience at small prototype reactors.

extent Mr. Epstein raised any decommissioning funding related concerns in any of these proceedings, his position was rejected. 3

In the recent electric utility restructuring case, the PaPUC found that the decommissioning cost estimate for SSES was reasonable, and it permitted PPL to recover these costs through a competitive transition charge (CTC) applied to the distribution customers on PPL's system. This finding was reflected both in a June 1998 PaPUC Order and an August 1998 settlement agreement. Ironically, Mr. Epstein was a party to this settlement, and he is now questioning the cost estimate and funding mechanism established in a settlement agreement, which he signed.

If anything, the PaPUC's actions with respect to SSES demonstrate that appropriate site-specific decommissioning funding mechanisms have been put in place by the state regulator, and the prudence of key decisions has been reviewed by the appropriate regulator. Requiring an additional "prudency review" relating to an Allegheny site-specific decommissioning cost study would be redundant and unnecessary, even if NRC had the authority to impose such a requirement.

B. Other Issues Raised By Mr. Epstein

1. Non-radiological Decommissioning Costs

3 At page 34 of his petition, Mr. Epstein claims that in a 1995 rate case PPL "went on record during the hearings as being disgruntled with the manner in which decommissioning costs are unfairly distributed among rate payers," implying that quoted testimony from the 1995 rate case related to nuclear decommissioning funding issues. However, any such suggestion is plainly unfounded for two reasons. First, the issue being discussed was decommissioning of fossil not nuclear generating plants. Second, PPL was endorsing the methodology used for recovering nuclear decommissioning costs – proposing that this approach be applied to fossil units.

Mr. Epstein raises a concern that NRC does not mandate that licensees provide for cost estimates of non-radiological decommissioning. 65 Fed. Reg. at 30552. However, NRC has previously addressed this concern in its 1996 rulemaking regarding decommissioning:

The NRC's authority is limited to assuring that licensees adequately decommission their facilities with respect to the cleanup and removal of radioactive material prior to license termination. Radiological activities that go beyond the scope of decommissioning, as defined in § 50.2, such as waste generated during operations or demolition costs for "greenfield" restoration, are not appropriate costs for inclusion in the decommissioning cost estimate.

"Final Rule: Decommissioning of Nuclear Power Reactors," 61 Fed. Reg. 39278, 39285 (July 29, 1996).

2. Premature Shutdown of Nuclear Reactors

Mr. Epstein raises concerns that large commercial nuclear power plants may not operate for the full forty-year term of their operating license and suggests that licensees should assume that they will prematurely shutdown. The NRC specifically addressed the issue of decommissioning funding for prematurely shutdown facilities in its 1996 rulemaking, in which it determined to address the status of decommissioning funding and expenditure of funds for prematurely shutdown plants on a case-by-case basis. 61 Fed. Reg. at 39278, 39285; 10 CFR § 50.82(c). Significantly, although a number of plants have shutdown prematurely, Mr. Epstein fails to establish that licensees undergoing premature shutdown have failed to meet their decommissioning obligations. In fact, even power reactor licensees that have gone bankrupt have successfully provided for decommissioning funding. 61 Fed. Reg. at 39285; 62 Fed. Reg. at 44077 footnote 3. Moreover, Mr. Epstein's concern is somewhat belied by the fact that a number of

licensees recently have applied for, or announced intentions to apply for, a twenty year license renewal, beyond the initial forty year license term. This fact provides countervailing evidence that licensees plan to operate beyond their forty-year terms, which plainly contradicts Mr. Epstein's suggestion that all operating reactors will prematurely retire from service before their forty-year licenses expire.

3. Spent Fuel Storage and High Level Waste Disposal

Mr. Epstein also raises concerns that proportional owners of power reactors should be required to account for the possibility of increased spent fuel storage costs, in the event that a high level waste storage facility is unavailable. Mr. Epstein suggests that this might occur under a premature shutdown scenario or if the Department of Energy (DOE's) fails to take the fuel as scheduled. Again, NRC has already addressed the need for funds for interim spent fuel storage and maintenance in 10 CFR § 50.54(bb), which requires that licensees submit plans for the management and provision of funding for the management of irradiated fuel until possession of the fuel is transferred to the Secretary of Energy. These spent fuel management plans are required to be submitted either five years before the expiration of the operating license or within two years after the permanent cessation of operations, whichever occurs first. NRC's approach in this regard is consistent with Congress' mandate that the industry provide ongoing funding for DOE's efforts to provide for the permanent storage of high level waste and DOE's taking on responsibility for such storage, pursuant to the Nuclear Waste Policy Act of 1982, as amended.

4. Low Level Waste Disposal

Mr. Epstein also raises concerns about site specific cost estimates for the disposal of low level waste from the Susquehanna Steam Electric Station (SSES), 90% of which is owned by PPL and 10% of which is owned by Allegheny. However, the NRC's generic formula amount in 10 CFR § 50.75(c) already provides a significant component of funding for low level waste burial costs, which is subject to an escalation factor provided by the NRC in NUREG-1307, "Report on Waste Burial Charges." As is evident from the NRC's most recent Revision 8 to NUREG-1307, NRC has taken into account changes affecting the cost of low level disposal based upon factors such as the availability of specific disposal sites and the use of waste vendor services that can significantly impact the overall cost of low level waste disposal. Thus, the NRC's existing minimum funding requirements provide reasonable assurance that decommissioning funding for low level waste disposal will be available when needed. Specifically, Mr. Epstein is concerned that site-specific decommissioning cost estimates for SSES have assumed that a disposal facility in the Appalachian Compact would be available at the time SSES is decommissioned. To the extent there is any purported need to review and evaluate the site specific cost estimates for low level waste disposal associated with SSES, the PaPUC has undertaken that review. As is evident from Mr. Epstein's Petition, he has availed himself of the opportunity to participate in proceedings in that forum, by participating in a 1995 rate case and a 1997 electric restructuring proceeding, both regarding PPL's interests in SSES.

5. Adequacy of Allegheny's Decommissioning Funding

Finally, Mr. Epstein expresses several specific concerns regarding Allegheny's method for calculating decommissioning costs and its rate of accumulation of funds. In

addition, Mr. Epstein raises questions implicating the commercial terms of PPL's arrangements with Allegheny with respect to SSES. The crux of Mr. Epstein's concern appears to be based upon his conclusion that Allegheny is only setting aside funds sufficient to cover 5% of certain site-specific estimates for decommissioning SSES. Based upon a 1995 telephone conversation between Mr. Epstein and a representative of Allegheny and an Allegheny Annual Report from 1994, Mr. Epstein asserts that Allegheny is accumulating approximately \$37.8 million for SSES decommissioning over the estimated useful life of the plant, although he cites a PPL site-specific estimate with a decommissioning cost of approximately \$800 million.

Even if Mr. Epstein's information were accurate with respect to the state of affairs in 1995, it is not accurate as of 1999. In accordance with 10 CFR § 50.75(f)(1), Allegheny submitted the required report on the status of its decommissioning funding on March 31, 1999, resubmitted May 20, 1999. This report reflects an acknowledgement by Allegheny that its 10% share of each unit requires funding sufficient to meet an NRC Minimum cost estimate of approximately \$36.5 million per unit, for a total of approximately \$72.9 million for SSES. Obviously, the NRC has had ample opportunity to review the adequacy of Allegheny's decommissioning funding, and if there were any issue of noncompliance with NRC requirements, it would have been raised upon NRC's review of Allegheny's most recent report.

Mr. Epstein's statements regarding Allegheny's obligations to PPL to provide for decommissioning funding warrant little attention. The specific commercial terms among participants in nuclear generating stations are generally beyond the NRC's regulatory scope. However, it is abundantly clear in any event that Allegheny has an obligation to

provide funding for its 10% share of the costs to decommission SSES both as an NRC licensee and under the terms of its arrangements with PPL. In addition, Allegheny has an ongoing responsibility to provide financial assurance for decommissioning its 10% share of SSES in accordance the requirements imposed by 10 CFR § 50.75.

III. CONCLUSION

For the reasons stated above, PPL and Allegheny urge that the NRC deny the Petition for Rulemaking. NRC's existing regulations are adequate to address all of those concerns expressed by the Petitioner that are within the NRC's jurisdiction. In fact, NRC conducted an exhaustive review of its requirements relating to financial assurance for decommissioning funding in a rulemaking that was recently completed and resulted in a "Final Rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors." Significantly, Mr. Epstein did not avail himself of his opportunity to comment on that rule when it was proposed and noticed for public comment. To the extent that Mr. Epstein requests that the NRC compel "prudence reviews" to be conducted, his recommendation must be rejected because the action requested is beyond NRC's jurisdiction. Even if the NRC had jurisdiction, the requested action would be redundant and unnecessary.