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PETITION RULE PRM 50-70
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July 26, 2000

The Honorable Annette Vietti-Cook
Secretary of the Commission
ATTN: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Comments of New England Power Company and Oglethorpe Power Corporation on
Petition for Rulemaking (Docket No. PRM-50-70)

Dear Ms. Vietti-Cook:

On behalf of New England Power Company ("NEP") and Oglethorpe Power Corporation ("OPC" or "Oglethorpe"), the following comments are hereby submitted with respect to the petition filed with the Nuclear Regulatory Commission ["NRC"] by Mr. Eric Joseph Epstein (docketed January 3, 2000 (Dkt. No. PRM-50-70)). 65 Fed. Reg. 30550 (May 12, 2000). In his petition, Mr. Epstein requests that the NRC (1) amend its financial assurance requirements for decommissioning nuclear power reactors to require uniform reporting and recordkeeping for all proportional owners¹ of

¹ The petitioner defines "proportional owners" as partial owners of nuclear generating stations who, in his view, are not licensees. When used by NEP or OPC, the term "proportional owner" or "co-owner" refers to any entity which (1) possesses a partial direct ownership interest in a nuclear generating station and (2) is listed on the operating license as licensed to possess, though not operate, the facility.

nuclear generating stations, (2) modify and strengthen current nuclear decommissioning accounting requirements for proportional owners, and (3) require that proportional owners conduct certain prudency reviews. As non-operating co-owners of nuclear generating facilities, both NEP and OPC have a significant interest in the NRC's response to Mr. Epstein's petition.

NEP, a corporation organized and operating under Massachusetts law, is a wholly-owned subsidiary of National Grid USA. National Grid USA is, in turn, indirectly owned by National Grid Group plc, a U.K.-based entity with operations in England, Wales, the United States and other countries. NEP is a co-owner of two nuclear power plants, Millstone Unit No. 3 (16.2%) and Seabrook Unit No. 1 (9.9%).² As part of the transition to a competitive environment in New England, National Grid USA has committed to the divestiture of all its generating facilities, including the nuclear facilities, to the extent practicable.

OPC is an electric membership cooperative organized and operating under Georgia law. Its 39 members are retail electric distribution companies ("electric member cooperatives" or "EMCs"), each of which is ultimately owned by retail consumers. Like NEP, OPC is a non-operating co-owner of specific nuclear power plants. OPC's interests include ownership in the Edwin I. Hatch Nuclear Plant Units 1 and 2 (30% of each unit) and the Vogtle Electric Generating Plant Units 1 and 2 (30% of each unit).

In his petition, Mr. Epstein contends that because the NRC's current regulatory scheme applies only to "power reactor licensees," proportional owners and others are able to escape NRC scrutiny by, *inter alia*, circumventing coordination with power reactor licensees, and by failing to verify, report, or monitor recordkeeping relating to nuclear decommissioning funding. He thus reasons that the system is flawed and likely to contribute to inadequate decommissioning funding. Further, he claims that financial uncertainties and ambiguities exist between the parties responsible for decommissioning and that adverse consequences may result to the ultimate detriment of ratepayers and taxpayers. Mr. Epstein goes on to argue that current mechanisms for estimating decommissioning costs for large power reactors are unreliable because they are based on flawed field study extrapolations, and he

² NEP is also a minority shareholder in Connecticut Yankee Atomic Power Company, Maine Yankee Atomic Power Company, Vermont Yankee Nuclear Power Corporation, and Yankee Atomic Electric Company (the "Yankee Companies"). As the owner-operators, the individual Yankee Companies are responsible for decommissioning funding. The Federal Energy Regulatory Commission has oversight of the recovery of decommissioning funds by the Yankee Companies under rate schedules subject to its jurisdiction.

questions whether current useful life estimates for nuclear generating facilities may be too generous in view of the possibility of premature shutdown. He therefore concludes that decommissioning cost projections must include variable funding scenarios.

To remedy the perceived regulatory inadequacies, Mr. Epstein recommends (1) that proportional owners conduct revised and updated site-specific analyses biannually based on what he views as prevailing nuclear industry realities; (2) that the NRC expand its current regulations in 10 C.F.R. § 50.75 to include all partners in nuclear generating stations, including board members of rural electric cooperatives ("RECs"); and (3) after implementing the foregoing, that the NRC compel proportional owners of nuclear generating stations, including RECs, to conduct prudency reviews.

Comments

Current NRC Regulations Adequately Cover Co-owners

Mr. Epstein's petition for rulemaking is based on the assumption that "proportional owners" are not licensees. Thus, he believes that proportional owners are able to escape the requirements imposed under current NRC regulations on power reactor licensees with respect to decommissioning funding and related reporting obligations.

Mr. Epstein's core assumption is erroneous as a matter of both technical accuracy and practical fact. While each nuclear power plant has a designated operator and lead licensee, all parties having a direct ownership interest in a nuclear power plant are listed on the appropriate operating license and are considered licensees. Thus, each holder of a direct ownership interest in a nuclear power plant (regardless of operator or non-operator status) is a "power reactor licensee" within the meaning of the NRC regulations on decommissioning funding assurance.

This view is shown by the fact that under 10 C.F.R. § 50.75(f)(1), a power reactor licensee is required to report on the status of its decommissioning funding progress at least every 2 years "for each reactor **or part of a reactor that it owns.**" (Emphasis added.) The required decommissioning funding status reports covering the facilities in which NEP and OPC have direct ownership interests (Millstone 3, Seabrook, Hatch and Vogtle) were filed by the respective lead licensees in March

³ As with most licensing submittals to the NRC, the lead licensee typically makes the required filings for itself and as agent for any other co-owner-licensees. Thus a co-owner-licensee may not make separate submittals for itself under 10 C.F.R. § 50.75, but rather may provide input to the lead licensee for inclusion in a single submittal made by the lead licensee.

1999, and provided the status of NEP's and OPC's decommissioning funding as of that time.³

Current NRC Regulations Ensure Adequate Funding

The petitioner's concerns that current NRC regulations may not ensure an adequate level of decommissioning funding assurance are also without merit. Current NRC regulations require, as an initial matter, that licensees submit decommissioning reports which must include a certification that financial assurance for decommissioning will be (or has been) provided in the appropriate amount. 10 C.F.R. § 50.75(b)(1). Rather than allowing mere certification as to adequate funding, the regulations set forth, with specificity, the funding mechanisms the NRC deems appropriate for various power reactor licensees (e.g., prepayment, use of an external sinking fund, a surety method, insurance, or other guarantee method).⁴ See 10 C.F.R. § 50.75(e)(1)(i) - (vi). Further, amounts designated for decommissioning by the respective licensees must be adjusted annually to comply with a formula which is itself adjusted to incorporate the various key escalation factors (e.g., labor, energy, and waste burial), see 10 C.F.R. § 50.75(c), and the NRC explicitly reserves the right to review the rate of fund accumulation and modify a licensee's accumulation schedule. See 10 C.F.R. § 50.75(e)(2).

As noted above, the NRC requires a biannual report on the status of decommissioning funding progress. 10 C.F.R. § 50.75(f)(1). According to the NRC Staff's review of the first cycle of completed decommissioning reports, "all power reactor licensees appear to be on track to fund decommissioning by the time that they permanently shut down their units." SECY-99-170, *Summary of Decommissioning Fund Status Reports* (July 1, 1999).

In addition, current NRC regulations fully anticipate and provide for adequate decommissioning funding in the premature shutdown context. In pertinent part, 10 C.F.R. § 50.75(f)(1) provides the following (emphasis added):

³ As with most licensing submittals to the NRC, the lead licensee typically makes the required filings for itself and as agent for any other co-owner-licensees. Thus a co-owner-licensee may not make separate submittals for itself under 10 C.F.R. § 50.75, but rather may provide input to the lead licensee for inclusion in a single submittal made by the lead licensee.

⁴ We note that only Federal power reactor licensees are allowed to submit statements of intent indicating that decommissioning funds will be obtained when necessary.

Any licensee for a plant that is within 5 years of the projected end of its operation, ***or where conditions have changed such that it will close within 5 years (before the end of its licensed life), or has already closed (before the end of its licensed life)***, or for plants involved in mergers or acquisitions shall submit this report annually.

Complementing the heightened scrutiny of fund accumulation in the period 5 years prior to shutdown or in the premature shutdown context, NRC regulations require that licensees submit preliminary decommissioning cost estimates at or about 5 years prior to the projected end of operations. These estimates must include an up-to-date assessment of major factors that could affect decommissioning costs, and if necessary, plans for adjusting funding levels to demonstrate assurance that adequate funds will be available when needed to cover decommissioning costs. See 10 C.F.R. § 50.75(f)(2) and (4).

While many regulatory provisions are devoted to adjusting decommissioning cost estimates and ensuring proper fund accumulation, the NRC's surveillance continues into the decommissioning process itself. Licensees are required to submit certification to the NRC within 30 days of permanent shutdown, and within 2 years following permanent cessation of operations, licensees must submit a post-shutdown decommissioning activities report ("PSDAR"), which must include a site-specific cost estimate. See 10 C.F.R. § 50.82(a)(1)(i) and (a)(4)(i).

Thus NRC regulations governing decommissioning funding assurance are specifically designed to provide "checks and balances" to ensure that any problems with funding shortfalls will be promptly detected and corrected. If the NRC identifies a problem with the rate of fund accumulation for any licensee, it has the express power to take action on a case-specific basis. Even the NRC's own review of status reports confirms that "licensees that have already permanently shut down their units prematurely are collecting funding shortfalls into the decommissioning period." SECY-99-170. Thus, contrary to what the petition for rulemaking suggests, the current regulations are adequate to address decommissioning funding assurance by all owners of power reactors and there is no justification for expanding those requirements generically for all non-operating co-owners.

It should be further noted that Mr. Epstein's argument with respect to the accuracy of current decommissioning cost estimates for large power reactors is not well founded. With the completion of decommissioning at Fort St. Vrain, and with the ongoing work at Trojan, Maine Yankee, Yankee Rowe and other plants, there is a growing body of experience on the actual costs of decommissioning large-scale power reactors. Although decommissioning is not complete at all these plants, the experience to date indicates that actual radiological decommissioning costs are generally in line with the cost estimates. As a result of the experience gained, there should be greater confidence in the accuracy of existing decommissioning cost estimates.

Under the circumstances, the additional regulatory requirements suggested by the petition for rulemaking would serve no purpose other than to increase the administrative burdens and costs borne by non-operating co-owners. Costs currently incurred by co-owners to compensate operators for decommissioning studies would be duplicated to the ultimate detriment of consumers. The petitioner makes no showing that the additional administrative burdens and related costs would result in any commensurate safety benefit. In fact, the assumption that non-operating co-owners would derive a different result in their decommissioning cost studies than the estimates found reasonable by the lead licensee-operator presents a quandary in itself since the owners, the NRC or both would have to reconcile the competing studies.

Current Co-Owner Vigilance

NEP and OPC have routinely reviewed the decommissioning cost studies prepared by the lead licensees or operators of the plants in which they hold ownership interests. Further, NEP and OPC have maintained decommissioning funds for their proportionate shares of decommissioning costs in compliance with 10 C.F.R. § 50.75. NEP and OPC have also provided the required information as part of the decommissioning fund status reports submitted to the NRC.

While NRC's oversight with respect to operators and non-operating co-owners effectively minimizes any underfunding risk, non-operating co-owners also have strong incentives to assess the accuracy of decommissioning cost estimates since they might face the prospect of additional and unexpected liability should another co-owner fall short. Thus, there are already a number of internal and external checks and balances in place, and any additional funds allocated to fulfilling new and duplicative decommissioning requirements and studies, as requested by the petitioner, would be better spent on funding the actual decommissioning of power reactors.

Petitioner Asks NRC To Address Issues Beyond Its Scope And Authority

Mr. Epstein argues that neither proportional owners, RECs, nor other industry participants sponsor decommissioning research or seek good-faith solutions to the permanent disposal and isolation of low-level and high-level radioactive waste. He also notes that the NRC does not mandate cost estimates or funding for non-radiological decommissioning.

Regardless of the merit or lack of merit inherent in his assertions, Mr. Epstein presents concerns that the NRC is neither authorized nor equipped to address. The NRC's mission is to ensure safe operation of nuclear facilities and to ensure that adequate funds will be available for safe and effective radiological decommissioning. The compulsion of private research with respect to decommissioning or with respect

to the disposal of radioactive waste is not a function assigned to the NRC, and as the NRC itself has recognized, any attempt by the NRC to govern non-radiological decommissioning would go beyond the NRC's authority and infringe on matters of state regulation. Similarly, the NRC's role does not extend to determining the appropriate useful economic life for a given nuclear facility. Instead, these are determinations left to the owners or to appropriate state or federal ratemaking authorities. Despite Mr. Epstein's belief to the contrary, recent industry developments suggest that many plants are likely to seek to have their operating licenses extended an additional 20 years.

In summary, the petition reflects a failure to appreciate the extensive safeguards already built into current NRC regulations, and the petitioner has failed to provide an adequate technical basis or to demonstrate any substantial safety benefit to be gained from his proposed new requirements. Accordingly, the petition for rulemaking should be denied.

Respectfully submitted,

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