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VIRGINIA POWER

The Secretary of the Commission
Attn: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Serial No. GL 95-045
NL&OS/EJL

DOCKET NUMBER **PR**
PROPOSED RULE **2, 50 + 51**
(60FR 37374) **(30)**

Dear Sir:

**10 CFR PARTS 2, 50, AND 51
DECOMMISSIONING OF NUCLEAR POWER REACTORS
PROPOSED RULE
FEDERAL REGISTER / Vol. 60, No. 139 / JULY 20, 1995 / p. 37374**

The Nuclear Regulatory Commission is proposing to amend its regulations on the decommissioning procedures that lead to the termination of an operating license for nuclear power reactors and release of the property. The proposed amendments would clarify ambiguities in the current rule and codify practices which have been used for other licensees on a case-by-case basis. Some proposed amendments have also been made for purposes of clarification and procedural simplification for non-power reactors. The proposed changes are based on recent NRC decommissioning licensing experiences.

In the Background section accompanying the proposed rule, the NRC recognizes that a number of licensees have shut down prematurely without previously having submitted a decommissioning plan. Subsequently, these licensees have requested exemptions from certain operating requirements because, without fuel present in the reactor, the requirements are no longer needed. The Commission believes that the proposed amendments would enhance efficiency and uniformity in the decommissioning process, and would allow for greater public participation. The rule revisions are intended to reduce regulatory burden while providing greater flexibility for implementing decommissioning activities, thereby resulting in resource savings through a more efficient and uniform regulatory process.

We support the Commission's intentions for these proposed rule changes. We agree that many lessons have been learned as a result of the recent premature plant decommissionings, and that the proposed rule changes represent a substantial improvement in the regulatory process for decommissioning. We commend the NRC staff for their efforts. However, we have some concerns about several of the issues addressed by the proposed rule changes, and respectfully request that the attached comments be considered by the Commission.

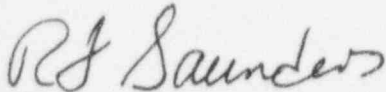
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Finally, we fully endorse the comments sent separately to the NRC by the Nuclear Energy Institute.

We appreciate the opportunity to provide comments on the proposed rule.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. F. Saunders". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

R. F. Saunders

Attachment

cc: Mr. John Schmitt
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Attachment

Virginia Power

Comments On The Proposed Rule For The

Decommissioning Of Nuclear Reactors

1. Section 50.59 Changes, tests, and experiments

- A. The scope of applicability of this section has been expanded to make it clear that this section applies to licensees that have submitted certification of permanent cessation of operations required by Section 50.82 (a) (1). This clarification appears to be helpful.
- B. This section has also been expanded to include additional criteria that must be met in order for a licensee to make facility changes without NRC approval. The proposed criteria are that the facility changes would not:
- (i) foreclose the release of the site for possible unrestricted use,
 - (ii) significantly increase decommissioning costs,
 - (iii) cause any significant environmental impact not previously reviewed, or
 - (iv) violate the terms of the license's existing license.

These criteria appear to be somewhat redundant to the controls established in Section 50.82 and could be unnecessarily burdensome.

More specifically, paragraph (a) (4) (i) of Section 50.82 requires submittal of a post-shutdown decommissioning activities report (PSDAR) which shall include "....a description of the planned decommissioning activities along with a schedule for their accomplishment, an estimate of expected costs, and a discussion as to whether the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements." The PSDAR content clearly envelopes the issues being addressed by the four criteria. Additionally, paragraph (a) (6) of Section 50.82 requires that "In taking actions permitted under Sec. 50.59 following submittal of the PSDAR, the licensee shall notify the NRC, in writing, before performing any decommissioning activity inconsistent with, or making any significant schedule change from, those actions and schedules described in the PSDAR." Finally, paragraph (a) (5) of Section 50.82 stipulates in part that licensees may not perform any major decommissioning activities until 90 days after the NRC has received the licensee's PSDAR submittal. Taken together, these provisions seem to establish an appropriate level of control for decommissioning facility changes. The four criteria being added to Section 50.59 do not seem to provide any additional regulatory benefit, and seem superfluous. We suggest that these criteria be deleted.

2. Paragraph 50.75 (f) (1) Preliminary decommissioning cost estimate

Paragraph 50.75 (f) (1) would require each power reactor licensee to submit a preliminary decommissioning cost estimate at or about 5 years prior to the projected end of operations. For cases where plants permanently cease operations prematurely, this requirement would seem to be impractical and in fact functionally redundant to the requirement to provide an estimate of expected costs that is contained in the PSDAR required by Section 50.82 (a) (4) (i). The proposed rule does not provide any guidance for licensees that may decide to end operations

prematurely. We suggest that this paragraph be expanded to provide guidance for this case.

3 Several of the decommissioning trust fund stipulations contained in Paragraph 50.82 (a) (7) appear to be unnecessarily restrictive.

- A. Paragraph (7) (i) addresses decommissioning trust fund use by licensees. Paragraph (7) (i) (A) stipulates that withdrawals must be for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2. This paragraph fails to recognize that licensees typically are funding the decommissioning trusts for activities beyond the scope of those covered by the NRC's definition. Additionally, funds are routinely withdrawn from the trust to pay administrative fees. Trust administration is not technically considered a decommissioning activity according to the NRC's definition. We suggest that paragraph (7) (i) (A) be expanded in order to recognize that withdrawals may be made for legitimate decommissioning expenses that are above and beyond the NRC's definition for decommissioning.
- B. Paragraph (7) (ii) stipulates that 3 percent of the generic amount specified in Section 50.75 may be used for decommissioning planning. An additional 20 percent may be used 90 days after the NRC has received the PSDAR. The remainder of the funds may be used following the submittal of a site specific cost estimate to the NRC. While these requirements are not unreasonable, they seem to be unnecessarily restrictive and redundant to other regulatory controls.

More specifically, the Company's decommissioning trust agreements, for both the Qualified and Non-Qualified trusts, stipulate that assets of the trust fund may not be used for or diverted to purposes other than the payment of decommissioning costs and certain administrative expenses. The Qualified trust agreement further states that the funds are established and governed by the provisions of the Internal Revenue Service Code section 468A. Section 468A stipulates that the fund's assets shall be used to satisfy the liability of the utility for decommissioning costs of the nuclear power plant and to pay administrative costs and other incidental expenses of the fund. Section 468A proceeds to define "decommissioning costs" as the expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal, and disposal of the structures, systems, and components of a nuclear power plant that has permanently ceased the production of electric energy. This definition goes on to include expenses associated with the preparation for decommissioning, such as engineering and other planning expenses, and all expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses. These provisions clearly and effectively limit the scope of the activities for which funds from the trusts can be distributed.

10 CFR 50.75 (f) (1) requires submittal of a preliminary decommissioning cost estimate approximately 5 years prior to the projected end of operations. This cost estimate will generally describe the anticipated decommissioning activities and their

associated costs. 10 CFR 50.82 (a) (4) requires submittal of a PSDAR which provides additional information regarding estimated decommissioning costs and scheduling. The proposed regulations provide ample opportunity for review by the NRC. 10 CFR 50.82 (a) (5) and (6) strictly and specifically limit the decommissioning activities that may be performed by a licensee. These provisions clearly and effectively establish the scope of decommissioning activities, and regulatory control of those activities.

Taken together, all of these measures appear to provide adequate control over the decommissioning activities and the distribution of funds from the decommissioning trust. As a result, there does not appear to be any regulatory benefit associated with the additional controls that are being proposed in paragraph (7) (ii). We suggest that paragraph (7) (ii) be deleted.

- C. Paragraph (7) (ii) specifies that a site specific decommissioning cost estimate must be submitted to the NRC prior to the licensee being permitted to use any funding in excess of previously stipulated amounts. This could be interpreted to mean that the NRC must approve the additional expenditures. If this paragraph is deleted per the recommendation contained in 3.B. above, this issue becomes moot. If this paragraph is retained, the intent of this "permitting" should be made clear. Expenditures made in accordance with the PSDAR and the decommissioning cost estimate should not require any additional NRC authorization. We suggest that "....the licensee being permitted to use any funding...." be replaced by "....the licensee utilizing any funding....".

4. Section 51.53 Supplement to environmental report

The proposed changes to paragraph (b) of this section refer in part to applicants for a license amendment authorizing decommissioning activities for a production or utilization facility, and applicants for a license amendment approving a license termination plan or decommissioning plan under Sec. 50.82. The proposed rule refers to license termination plans and decommissioning plans. However, license amendments authorizing decommissioning activities for utilization facilities seem not to be an element of the proposed rule other than in this paragraph. The reference to this application seems to be an error. We suggest that the reference to applicants for a license amendment authorizing decommissioning activities for a utilization facility be deleted from this paragraph.

5. Section 51.95 Supplement to final environmental impact statement

The proposed changes to paragraph (b) of this section also refer to applicants for a license amendment authorizing decommissioning activities for a utilization facility. We suggest that this reference be deleted from this paragraph based on the discussion provided for issue 4 above. Additionally, this paragraph makes no mention of applicants for a license amendment approving a license termination plan or decommissioning plan under Sec. 50.82. This appears to be an omission. It

seems that the applicant references in this paragraph ought to be consistent with the applicant references in paragraph 51.53 (b). We suggest that references to applicants for a license amendment approving a license termination plan or decommissioning plan under Sec. 50.82 be added to this paragraph.