

CLERK NUMBER PR-30,40,50 et al.
PROPOSED RULE (50 FR 5600) (143)

LAW OFFICES OF

BISHOP, LIBERMAN, COOK, PURCELL & REYNOLDS

1200 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

(202) 857-9800

DOCKETED
USRC

IN NEW YORK

BISHOP, LIBERMAN & COOK

15 AVENUE OF THE AMERICAS

NEW YORK, NEW YORK 10036

(212) 704-0100

TELEX 222767

TELEX 440574 INTLAW UI
TELECOPIER (202) 857-9846

*85 DEC 20 14:10

December 20, 1985

WRITER'S DIRECT DIAL
(202)

Mr. Samuel J. Chilk
Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Proposed Rule Regarding Decommissioning
Criteria For Nuclear Facilities,
50 Fed. Reg. 5600 (February 11, 1985)

Dear Mr. Chilk:

The Utility Decommissioning Group ("UDG")¹ hereby submits the following additional comments relating to the Commission's proposed rule on Decommissioning Criteria for Nuclear Facilities, 50 Fed. Reg. 5600 (February 11, 1985). The purpose of these additional comments is (1) to bring to the Commission's attention new information relevant to UDG's previous comments on the level of decommissioning costs, and (2) to address an issue raised by the State of Illinois in its comments, filed July 12, 1985, relating to the proper funding method to be used by an electric utility licensee where a plant has ceased operation and a period of storage or long-term surveillance will be provided prior to the completion of decommissioning activities. In its comments, Illinois made certain assertions, including representations as to the Staff position on this issue, which, in some respects, are at odds with UDG's understanding of the proposed rule. We have been advised by the Staff that additional comments on this issue would be welcome.

1/ UDG consists of fourteen power reactor licensees. In addition to the thirteen licensees identified in previous comments, Florida Power & Light Company is now a member of the Group. UDG submitted comments on the proposed rule on May 13, 1985, the original deadline for comments. After the deadline was subsequently extended to July 12, 1985, UDG filed further comments on that date, providing more recent decommissioning cost data and responding to certain comments filed by other parties.

8512310360 851220
PDR PR
30 50FR5600 PDR

DEC 30 1985 *pd*

acknowledged by card.....

*DS 10 add: Kerth G. Stayer, 11305 S
Catherine R. Mattisen, 11305 S
Robert Wood, AR-5037
Zoltan Rosztoczy, 266 Phil*

I. LEVEL OF DECOMMISSIONING FUNDING

In our previous comments, UDG emphasized that the Commission should not specify any particular level of funding as generally adequate to cover decommissioning costs. In particular, UDG criticized the statement in the preamble to the proposed regulations that the specified \$100 million figure for power reactors represents "sufficient funds to cover decommissioning costs for most" plants. 50 Fed. Reg. 5606, Col. 3. One reason for UDG's objection was that such specified amounts may be misused in ratemaking proceedings as establishing a ceiling on the level of decommissioning costs. Such a result would be counter to the Commission's desire for financial assurance.

In at least one pending rate case, the amount specified in the proposed rule has already been misused in this fashion by intervenors. We append to these comments the relevant portions of the motion to intervene and protest by certain municipal customers of Connecticut Light & Power Company, in which they argue (at page 28) that the Company's rate request should be rejected on the ground that, inter alia, the decommissioning allowance would "exceed the \$100 million per unit allowance suggested by the Nuclear Regulatory Commission's pending rulemaking" UDG again urges the Commission to make clear that the level of decommissioning funding is to be based on plant-specific cost estimates and that no generic cost estimate should be considered adequate for a particular plant.

Recent preliminary cost studies (dated October 1985) for three multi-unit sites again show the inadequacy of the \$100 million figure. These studies are in addition to cost studies described in UDG's previous comments (because the studies have not yet been filed with the ratemaking authorities, the identity of the plants is not given):

<u>Location</u>	<u>Reactor Type</u>	<u>Capacity</u>	<u>Number of Units</u>	<u>Approximate Estimated Decommissioning Costs (1985 Dollars)</u>
Southeast	PWR	860 MW	3	\$400 million (for site)
Southeast	PWR	1180 MW	2	\$300 million (for site)
Southeast	PWR	1145 MW	2	\$350 million (for site)

II. FUNDING METHOD DURING PERIOD OF STORAGE OR SURVEILLANCE

A. Background and Summary

Under the Commission's proposed regulations, multi-asset utilities would be permitted to use an internal funding method for providing the costs of decommissioning. Proposed 10 C.F.R. §50.33(k)(4)(iv). However, in that part of the proposed regulations relating to license termination, proposed 10 C.F.R. §50.82(c), the Commission would provide as follows (emphasis added):

(c) Decommissioning plans which propose an alternative that delays completion of decommissioning by including a period of storage or long-term surveillance must provide that -

(1) Funds needed to complete decommissioning be placed into an account segregated from licensee assets and outside the licensee's administrative control during the storage or surveillance period, or a surety method or fund certification be maintained in accordance with the criteria of §50.33(k)

UDG had interpreted this provision to mean that where a multi-asset utility commences SAFSTOR and continues as an on-going multi-asset utility during the SAFSTOR period, the utility may continue to use an internal funding mechanism, provided it maintains with the Commission a certification such as that contemplated by proposed Section 50.33(k)(1) that adequate financing is being provided. See UDG Comments, filed May 13, 1985, at 19-20.

In its comments the State of Illinois argues that an electric utility licensee should be required to assign all monies collected for decommissioning over the operating life of the plant to an external account once the plant ceases to operate if a period of storage or long-term surveillance will be used as part of the decommissioning plan. Illinois Comments at 4-6. Illinois also urges the Commission to require such external funding whenever the decommissioning activities will take longer than one year to complete. *Id.* at 6. In connection with this position, Illinois states that the use of a "fund certification" under proposed Section 50.82(c)(1) is meant to be restricted to

government licensees that provide certification under proposed Section 50.33(k)(3)(iv) that they will serve as guarantor of decommissioning funds. With such a restriction, investor-owned electric utilities would be required to convert to an external funding method whenever a storage or surveillance period will be provided, and could not continue to use internal funding with a certification under proposed 10 C.F.R. §50.33(k). Nothing in the language of the proposed regulations or the statement of considerations is cited as support for such a restriction. However, Illinois claims that "[d]iscussions with the NRC staff" have confirmed that the use of a fund certification under Section 50.82(c) is to be limited to government licensees.

UDG believes that Illinois' position goes too far. There is no convincing rationale requiring a conversion from internal funding to external funding by a multi-asset utility whenever a period of storage or surveillance will be provided. Instead, the Commission should provide for periodic review of financial assurance on a case-by-case basis before and during the storage period to determine whether continued use of internal funding is justified.

B. Discussion

1. There Is No Rational Basis For Requiring Conversion From Internal Funding to External Funding By Multi-Asset Utilities Whenever A Storage Period Will Be Provided

Illinois puts forth essentially three reasons for requiring utilities to convert to external funding in the event decommissioning will be delayed by even a short period of storage or surveillance. First, Illinois argues that if a portion of decommissioning costs has to be collected after the plant ceases to operate, a ratepayer equity problem arises in that the ratepayers who would be required to pay this portion of decommissioning costs may not have benefited from the power generated by the plant. Illinois Comments at 5. Second, Illinois states that "if a prepaid external fund is not required, then there could be a conflict between the need for funds to replace the generating capacity being decommissioned and the need for decommissioning funds." Illinois Comments at 6. Third, Illinois argues generally that internal funding is riskier and hence more costly than external funding.

Illinois' first point -- the ratepayer equity argument -- is a complete non sequitur. The question of ratepayer equity is a ratemaking concern and has nothing to do with financial

assurance. Even if a shortfall in collection were to exist at the end of plant life, the same concern with ratepayer equity would exist regardless of whether the utility was using an internal or external funding method. Illinois ignores the fact that the decommissioning cost component of a utility's rates will be designed to recover full decommissioning costs during the operating life of the plant. The NRC's proposed rule recognizes this fact and contemplates that existing licensees may have to commence collection of decommissioning costs on an accelerated basis as necessary to ensure accumulation of funds to cover total decommissioning costs within the remaining life of the facility. 50 Fed. Reg. at 5608, Col. 3.

Illinois' second point is another non sequitur. It is specious to suggest that a licensee would choose -- and be permitted by rate regulatory bodies -- to defer decommissioning expenditures in order to have more cash for plant expansion. Moreover, the pattern of plant construction and retirement is such that construction and financing of new plant must be completed before the plant to be replaced is scheduled for retirement. Thus, the conflict Illinois suggests is not realistic.

Finally, with regard to the relative costs of external and internal funding methods, this is a subject that has already undergone extensive analysis (see UDG Comments, filed May 13, 1985.) Suffice it to say that substantial evidence, including the studies referred to in UDG's May 13, 1985 comments, supports the conclusion of the Regulatory Analysis (at page 15) that the cost of external funding is at a minimum approximately twice that of an internal reserve. Moreover, Illinois' reliance on the study published in October 1982 by the National Regulatory Research Institute is misplaced for two reasons. First, while that study recognizes that internal funding, such as negative net salvage, can lower costs to ratepayers, it fails to take sufficient account of this factor in calculating the relative costs of the two methods. Second, the study assumes erroneously that a utility's cost of capital will be higher as a result of using an internal fund (the study suggests that investors will perceive the utility as riskier due to the future unfunded liability of decommissioning). However, this ignores the availability of an internal fund to reduce the utility's debt obligations and thereby reduce financing costs, which has a favorable effect on the utility's financial health and investment risk.

2. Continued Use of Internal Funding
Is Supported By Several
Positive Financial Considerations

Illinois' position appears to reflect a belief that a utility's financial stability will be eroded once a nuclear unit ceases operation and decommissioning is deferred until after a storage period. However, a requirement for an immediate conversion to external funding, as advocated by Illinois, is inconsistent with financial realities. To the extent there is any change in a utility's financial position as a result of the unit's being taken out of service, the change is a positive one.

First of all, once a nuclear unit has ceased operation, the potential liabilities of the utility arising from the possibility of an accident at that unit are greatly diminished. The risk of a severe accident necessitating premature decommissioning is, of course, not a concern.² Corroborating the lower risk associated with a plant that has been taken out of service is the fact that there is a substantial decrease in the cost of nuclear liability insurance during a period of storage or surveillance. Insurance premiums are estimated to decrease from 40-60% from the date all reactor operations cease until all fuel is removed from the site. See Letter from American Nuclear Insurers to TLG Engineering, Inc., dated January 4, 1984. During a safe storage period (provided fuel is no longer on site) premiums are expected to decrease by 95% or more. Ibid. Premiums would increase during the actual decontamination and decommissioning process, but are still projected to be 20-40% below normal operating premiums. Ibid.

In addition, it is important to bear in mind that even after one of the utility's generating units has been shut down,³ the utility's customer requirements and level of sales remain the same. The utility will either generate the needed power from its

2/ Moreover, costs associated with post-accident decontamination and clean-up would be covered by property damage insurance maintained in accordance with 10 C.F.R. §50.54(w).

3/ Note, in this connection, that under the proposed regulations only multi-asset utilities -- i.e., those owning interests in more than one generating facility -- would be permitted to use an internal funding method in the first place. Proposed 10 C.F.R. §50.33(k)(4)(iv).

other units or purchase power from other utilities. Therefore, the shutting down of a generating facility does not in and of itself have any adverse impact on a utility's overall revenues and rate of return. In short, the utility remains an equally secure institution after one of its generating facilities is taken out of service and decommissioned.

Finally, it is simply irrational to require utilities to make an immediate conversion from internal to external funding at the end of plant operation. By requiring utilities to convert a substantial amount of assets to liquid capital over a short period of time, such a provision could itself strain licensee resources and financial markets and adversely affect the financial position of the utility. Such a requirement could also bias utilities against alternatives such as SAFSTOR which may be the most environmentally safe option in terms of radiation exposure.

3. The Continued Use of Internal Funding Can Be Reviewed on a Case-By-Case Basis, and Conversion To External Funding Can Be Ordered When Necessary

As we have shown, there is no rational basis for requiring an immediate conversion to external funding whenever a storage period will be used. However, we recognize that there may be some concern with the continued use of an internal fund where decommissioning may be delayed for an indefinite period of time. The financial stability of any institution cannot be guaranteed indefinitely. Nevertheless, such uncertainties apply equally to external and internal accounts. The funds in external accounts must be invested somewhere, and it is likely the utilities will remain as secure an institution in the long term as other investment opportunities.

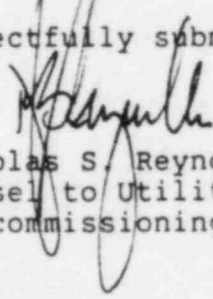
We recommend that the Commission address each case on an individual basis to determine whether a conversion to external funding is warranted. The Commission may require utilities that plan to use SAFSTOR in conjunction with internal funding to submit, as part of the decommissioning plan under proposed Section 50.82, appropriate documentation as to their financial posture. In addition, the Commission can establish a mechanism for periodic review of financial assurance during the storage period. Cf. Proposed Section 50.82(c)(2)(requiring means for adjusting cost estimates and funding levels during storage period). If it appears that internal funding no longer provides adequate assurance, the Commission may then require a conversion to external funding. The utility, however, should be permitted to make the conversion on a schedule consistent with its other

financial obligations and market conditions. An immediate conversion during a period of high interest rates may result in excessive financing costs.

III. CONCLUSION

For the foregoing reasons, the proposed rule should be clarified (1) to indicate that where a multi-asset utility commences a program of decommissioning, such as SAFSTOR, that includes a period of storage or long-term surveillance, and the utility continues as an on-going multi-asset utility during this period, it is not required to convert to the use of an external funding mechanism; and (2) to establish a mechanism for case-by-case review to determine whether the use of an internal reserve will continue to provide reasonable funding assurance.

Respectfully submitted,


Nicholas S. Reynolds
Counsel to Utility
Decommissioning Group

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of
Connecticut Light & Power
Company

)
)
) Docket No. ER85-720-000
)

MOTION TO INTERVENE, PROTEST, MOTION TO
REJECT, MOTION TO STRIKE TESTIMONY, MOTION
TO INSTITUTE PRICE SQUEEZE PROCEDURES AND
MOTION FOR MAXIMUM SUSPENSION OF THE PARTIAL
REQUIREMENTS WHOLESAL MUNICIPAL CUSTOMERS

Robert A. O'Neil
James F. Fairman, Jr.
Shaheda Sultan
Miller, Balis & O'Neil, P.C.
1101 Fourteenth Street, N.W.
Suite 1400
Washington, D.C. 20005
(202) 789-1450

September 23, 1985

loss for transmission service is 1.7% and the average loss percentage is 2.0%, 1/ however, on Statements BB and BD of Period II, CLP has used a single line allocation factor for each class of service that represents demand and energy at the generator, with no separate indication of the Kw and Kwh determined for losses or what the remaining balance is for sales at the meter point. Although CLP did provide the work paper that summarizes a prior loss study, it has not provided the missing link from the loss study to the filing.

Because CLP has failed to substantiate through testimony or work papers, the derivation of the actual loss percentages in Periods I and II, that were applicable to both demand and energy allocation factors, the partial requirements customers are at a loss to determine whether in fact the demand and energy allocation factors are correct. Further discovery will be required in order to fully investigate the reasonableness of CLP's applied loss factors.

H. DECOMMISSIONING EXPENSE.

The filed decommissioning methodology and expense for Millstone Unit Nos. 1, 2, and 3 have yet to be approved by any regulatory agency.

1/ For primary distribution, CLP has indicated that the peak loss percent is 4.3% and the average loss is 3.8%.

This omission is of more than academic interest to the Municipalities because the amounts requested by CLP are substantial. In fact, the amounts claimed for decommissioning of Millstone Units No. 1, No. 2, and No. 3 ^{1/} exceed the \$100 million per unit allowance suggested by the Nuclear Regulatory Commission's pending rulemaking proceeding on decommissioning by almost \$175 million.

The extraordinarily large amounts associated with CLP's decommission expense are attributable both to the method selected (immediate dismantlement) and the cost escalation assumptions adopted. CLP uses a 7% inflation factor and a 25% contingency allowance in developing its decommissioning costs. These escalation factors are excessive and unduly inflate the decommissioning expense.

The Municipalities also challenge CLP's proposal to adopt now the immediate dismantlement method, and specifically the proposal to dismantle Millstone Units No. 1 and No. 2 before Unit No. 3 is retired. Even if total dismantlement were deemed desirable, the possibility of moth-balling or entombing Units No. 1 and No. 2 until the retirement of Unit No. 3 may well be preferable to immediate

^{1/} Levy, direct testimony, p. 15. Millstone Unit No. 1: \$146.5 million. Millstone Unit No. 2: \$144.8 million. Millstone Unit No. 3: \$183.6 million.

dismantlement. Certainly the continuing presence of operating and security personnel at the Millstone site engaged in the operation of Unit No. 3 means that immediate dismantlement of Units No. 1 and No. 2 will not result in the reduction of many costs normally associated with moth balling or entombment.

I. SPENT NUCLEAR FUEL DISPOSAL COSTS.

CLP has made adjustments for 1986 (Period II) regarding spent nuclear fuel costs for Millstone Units No. 1 and No. 2 which are prompted by a NUSCO decision made on June 28, 1985, to elect to pay a lump-sum for delivery of spent fuel to the Department of Energy ("DOE") in 1998. 1/ An interim option to make forty quarterly payments was abandoned in favor of a lump-sum payment due in 1997 on the basis of a present worth analysis. The "qualitative" factors said to be in support of that decision were "an incentive for DOE to perform" because payment would not be due until 1997, the year prior to delivery of spent fuel, and greater financial flexibility for NU.

The Municipalities give little credence to the doubts cast upon the DOE, and take little comfort in the assertion that the monies will be in hand in 1997 because NU has the

1/ Witness Noyes, Direct Testimony, p. 12.