Proposed Rules

Federal Register
Vol. 65, No. 93
Friday, May 12, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–70]

Eric Joseph Epstein; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Mr. Eric Joseph Epstein. The petition, docketed on January 3, 2000, has been assigned Docket No. PRM–50–70. The petitioner requests that NRC amend its financial assurance requirements for decommissioning nuclear power reactors to: (1) Require uniform reporting and recordkeeping for all ''proportional owners'' of nuclear generating stations (defined by the petitioner as partial owners of nuclear generating stations who are not licensees); (2) modify and strengthen current nuclear decommissioning accounting requirements for proportional owners; and (3) require proportional owners to conduct a prudency review to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but shareholders and board members of rural electric cooperatives as well. The petitioner believes that the proposed amendments would eliminate the funding gap for decommissioning between nuclear power licensees and proportional owners of nuclear generating stations.

DATES: Submit comments by July 26, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site allows you to upload comments as files in any format, if your web browser supports the function. For information about the interactive rulemaking website, contact Carol Gallagher, (301) 415–5905 e-mail:cag@nrc.gov.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or e-mail:dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner, Eric Joseph Epstein, has been actively involved since 1985 in testifying, filing, and intervening on nuclear decommissioning and radioactive waste isolation issues before the NRC and the Pennsylvania Public Utility Commission. The petitioner's research and testimony have focused on Peach Bottom, Units 1, 2, and 3; the Saxton Experimental Reactor; Shippingport Atomic Power Station; the Susquehanna Steam Electric Station (SSES), Units 1 and 2; and Three Mile Island (TMI), Units 1 and 2. The petitioner states that he and General Public Utilities Nuclear (GPUN) sponsored and invested $890,000 in remote robotics research relating to nuclear decommissioning.

Petitioner's Concern

Mr. Epstein submitted his petition for rulemaking because he believes the funding component for decommissioning provided by proportional owners of nuclear generating stations, including rural electric cooperatives (RECs), is fatally flawed and likely to contribute to inadequate funding.

The petitioner states that proportional owners are not required to submit periodic cost projections, conduct site-specific studies, or coordinate with the power reactor licensee. Also, the petitioner states that proportional owners are not mandated by the NRC to verify, report, or monitor recordkeeping relating to nuclear decommissioning funding mechanisms.

The petitioner believes it is grossly unfair and inequitable to require Federal taxpayers and State ratepayers to provide a financial safety net for the nuclear investments of proportional owners. The petitioner offers the following reasons to support his belief: (1) Proportional owners, including RECs, aggressively supported construction, licensing, and operation of nuclear generating stations; (2) they were fully cognizant that no commercial nuclear reactor had been decommissioned, and that a solution to nuclear waste disposal did not exist; (3) neither the utility, industry, proportional owners, nor RECs, have actively sponsored decommissioning research or sought good faith solutions to the permanent storage and isolation of low-level and high-level radioactive waste; and (4) proportional owners and RECs, willfully pursued a financial investment in nuclear energy which they knew was fraught with huge uncertainties.

Background

Definition of an Electric Utility

The petitioner states that utility deregulation has caused concern regarding future rate recovery for the nuclear industry. The petitioner explains that NRC had anticipated the nuclear industry's financial apprehension and acted accordingly by promulgating regulations to resolve the industry's concern. The petitioner notes that the NRC published proposed amendments on September 10, 1997 (62 FR 47588), in response to the potential deregulation of the power generating

industry and to questions as to whether it should modify its current regulations concerning decommissioning funds and their financial mechanisms. The proposed rule was issued as a final rule on September 22, 1998 (63 FR 50465), a fact not indicated by the petitioner.

The petitioner states that the NRC extended the definition of an ''electric utility'' to include:

> An entity whose rates are established by a regulatory authority by mechanisms that cover only a portion of the costs collected in this manner. Public utility districts, municipalities, rural electric cooperatives and State and Federal agencies, including associations of any of the foregoing, that establish their own rates are included within the meaning of ''electric utility.'' (Section 50.2, Definitions, [September 10, 1997; 62 FR 47605].)

However, according to the petitioner, the NRC created a legal loophole for proportional owners and RECs, by limiting reporting and recordkeeping requirements to ''power reactor licensees,'' thus enabling partial owners to be free from NRC scrutiny. The petitioner recommends that NRC mandate that all partial owners of nuclear generating stations, including RECs, be subject to reporting and recordkeeping requirements and pre-funding thresholds and timetables in Section 50.75 (a) through (e).

Current Problems Associated With Cost Estimates for Radiological Decommissioning

The petitioner questions the reliability of nuclear decommissioning cost projections provided by industry consultant, Thomas LaGuardia, and TLG, Inc. The petitioner states that TLG-based decommissioning estimates on flawed and specious field studies extrapolated from small, minimally contaminated, and prematurely shut-down nuclear reactors.

The petitioner states that wild fluctuation in the cost estimates for radiological decommissioning are attributable to the lack of actual decommissioning experience at large nuclear generating stations, over 1000 megawatts electric (MWe), or at plants that have operated for their full, planned lifespan. The petitioner indicates that the largest nuclear power plant to be fully decommissioned was Shippingport Atomic Power Station, a 72 MWe light-water breeder reactor that is substantially smaller than SSES, Units 1 and 2 (1050 MWe for each unit).

The petitioner states that TLG, Inc., admitted that Shippingport was ''almost like a pilot plant.'' The petitioner believes that the immense differences between Shippingport and the SSES make any financial comparison between the two inadequate and baseless. The petitioner states that although several other nuclear reactors are being prepared for decommissioning, they provide little meaningful decommissioning experience that could be used to reliably predict the decommissioning costs of SSES. As examples, the petitioner provides detailed discussions regarding the decommissioning cases of Yankee Rowe and Shoreham.

The petitioner states that no commercial nuclear power plant has been decommissioned, decontaminated, and returned to free-release. According to the petitioner, nuclear decontamination and decommissioning technologies are in their infancy. The petitioner characterizes the NRC's treatment of prematurely shutdown reactors as follows: (1) There is a reluctance to undertake, initiate or finance decommissioning research; (2) prematurely shutdown reactors place an additional financial strain on the licensee; and (3) these reactors have been retired for mechanical or economic reasons. [United States Nuclear Regulatory Commission, Advisory Panel for the Decommissioning of Three Mile Island Unit-2, September 23, 1993].

The petitioner states that Pennsylvania Power and Light, Inc. (PP&L) contracted with TLG to construct decommissioning cost estimates based on work completed at Shippingport, Shoreham, Yankee Rowe, and small prototype reactors such as: BONUS (17 MWe), Elk River (20 MWe), and Pathfinder (60 MWe). The petitioner asserts that TLG's estimates relied on: (1) The development of nonexistent technologies; (2) anticipated projected cost of radioactive disposal; and (3) the assumption that costs for decommissioning small and short-lived reactors can be accurately extrapolated to apply to large commercial reactors operating for 40 years.

The petitioner indicates that in 1981, PP&L predicted that its share to decommission SSES would be between $135 and $191 million. The petitioner notes that estimate has increased by at least 553 percent in the last 19 years.

Proportional Confusion: The Case of the Allegheny Electric Cooperative and Pennsylvania Power and Light, Inc.

The petitioner questions Allegheny Electric Cooperative's (Allegheny) method for calculating decommissioning cost. The petitioner states that Allegheny owns 10 percent of the SSES, while PP&L owns 90 percent. The petitioner states that Allegheny is responsible for 10 percent of the projected funding target for decommissioning. The petitioner states that PP&L's consultant, TLG, estimates PP&L's share for decommissioning SSES to be $724 million. Therefore, according to the petitioner, Allegheny's share would be $79 million of the $804 million projected cost for decommissioning. However, the petitioner asserts that Allegheny has set aside only 5 percent (rather than 10 percent) of its projected share of the cost of decommissioning. According to the petitioner, the Allegheny's Director of Finance and Administrative Service states that Allegheny is basing its decommissioning estimates on data provided by PP&L (i.e., Allegheny's portion of the estimated cost of decommissioning SSES is approximately $37.8 million and is being accrued over the estimated useful life of the plant). The petitioner asserts that Allegheny does not know what method it is employing to calculate decommissioning cost. In addition, PP&L does not actively monitor Allegheny's obligations.

The petitioner characterizes the uncertainty between decommissioning partners as crucial and potentially debilitating and believes that the question of financial responsibility is increasingly important since PP&L has no enforcement mechanism to compel Allegheny to fund 10 percent of the decommissioning cost. The petitioner adds that Allegheny is owned and controlled by 14 distribution cooperatives. Allegheny is not regulated by the Public Utility Commission (PUC) and does not have publicly traded stock. Therefore, the petitioner assets there is no behavior modifying mechanism to allow State regulators or PP&L shareholders to oversee Allegheny's contributions.

The petitioner believes that Allegheny's tenuous financial position regarding decommissioning savings will place a greater fiscal burden on PP&L by: (1) Creating further uncertainties about PP&L's ability to meet its financial commitments to decommission SSES; (2) undermining TLG's net decommissioning estimates; and (3) radically skewing TLG's contingency factor. The petitioner asserts that if this scenario is realized by other power reactor licensees and their proportional partners, the ripple effect could be staggering and could potentially expose ratepayers and taxpayers to billions of dollars in nuclear decommissioning shortfalls. In addition, the petitioner states that although the NRC requires that all nuclear power plants be returned to greenfield, i.e., the original environmental status of the facilities

prior to construction, it does not mandate cost estimates for non-radiological decommissioning. Furthermore, the petitioner asserts that greenfield has not been achieved by any large commercial nuclear plant, and utilities are not required to save for the mandated restoration; therefore, placing additional strain on the companies' ability to finance radiological and non-radiological decommissioning.

Planned Operating Life for Nuclear Generating Stations

The petitioner states that experience at large commercial nuclear power plants over 200 MW has clearly demonstrated that TLG's assumption that nuclear units will operate for 40 years contradicts existing nuclear experience. The petitioner has identified and provided detailed information on 13 nuclear power plants that have shut down prematurely. The petitioner states that a sense of fair play, intergenerational equity, and fiduciary accountability should direct proportional owners, including RECs, to plan for decommissioning on the basis of the assumption that their nuclear units will prematurely shut down. The petitioner adds that operating capacity and historical evidence from commercial nuclear power plants do not indicate that nuclear power plants will operate for 40 years. The petitioner assesses that there are chronic shortfalls between targeted funding levels and actual costs for nuclear decommissioning. The petitioner asserts that the burden of proof lies with the power reactor licensees and their partners to demonstrate that the 40-year lifespan that they predicate their financial planning upon is realistic. The petitioner believes the nuclear industry has exacerbated this problem by refusing to provide adequate funding for nuclear decontamination and decommissioning.

Spent Fuel Isolation

The petitioner states that a significant problem for nuclear generating stations is that the fuel storage capacity will be exhausted before the plant license expires. The petitioner states that because there is no location to store spent fuel permanently, nuclear facilities have become de facto high-level, radioactive waste sites, and many are currently proposing to increase the capacity to store this waste using an untested, commercial waste technology (dry cask storage). The petitioner contends that the additional cost of increasing the capacity of spent fuel will have a significant effect on decommissioning. The petitioner notes that at SSES, spent fuel costs were omitted from TLG's decommissioning estimate. The petitioner explains that: (1) Isolation of high-level radioactive waste, which is primarily composed of spent nuclear fuel, cannot be separated from nuclear decommissioning; (2) at the earliest, Yucca Mountain, the designated repository for the storage of nuclear waste, will be available in 2010; (3) nuclear generating stations cannot be immediately decontaminated and decommissioned with spent fuel on site or inside the vessel; (4) aggressive and destructive decontamination cleanup processes will be unavailable until spent fuel is removed from the nuclear plant's temporary storage facilities; (5) front-end decommissioning tasks require skilled workers for site-specific tasks; and (6) labor costs are erratic and should be linked to inflationary indices.

The petitioner charges that NRC and the nuclear industry devote scant resources to decommissioning research and development. The petitioner believes that this laissez-faire approach should not be rewarded by financially penalizing ratepayers and taxpayers. The petitioner warns that if a long-term solution to spent fuel isolation is not found in the near future, many nuclear generating stations will be shut down prematurely because of a lack of storage space. Therefore, the petitioner believes that cost projections by proportional owners and RECs, must include variable funding scenarios in the event a high-level radioactive isolation site is not available during a premature shutdown, or at the end of a plant's planned 40-year operating life span.

Low-Level Radioactive Waste Isolation

The petitioner states that TLG provided nuclear waste storage and nuclear decommissioning cost estimates for all Pennsylvania utilities regulated by the PUC. The petitioner states that TLG's representative based his cost estimates for low-level radioactive waste (LLRW) disposal on the assumption that the Appalachian Compact would be available when SSES closes (1995 PP&L Base Rate Case, Page 1034, Lines 17–20). The petitioner states that the representative concluded that the disposal of LLRW is the most expensive component in the decommissioning formula (Page 2091, Lines 21–25); however, the representative conceded that it may be necessary to recompute cost estimates for disposal because the Barnwell storage facility for LLRW will be open for 7 to 10 years for all states except North Carolina (Page 2108, Lines 4–9). The petitioner notes that PP&L has not reconfigured the cost of LLRW disposal since Barnwell opened July 5, 1995.

The petitioner asserts that in addition to recomputing the cost of LLRW disposal, the reopening of Barnwell has definitely postponed the siting of a waste facility in Pennsylvania. The petitioner notes the Appalachian States LLRW Commission Executive Director observed: ''If Barnwell's going to be open to the entire country for at least the next 10 years, is there really a pressing need to continue work on regional disposal facilities?'' The petitioner states that on June 18, 1998, the Appalachian States LLRW Commission voted to support the Pennsylvania Department of Environmental Protection's suspension of the siting process for an LLRW disposal facility.

Court Cases

The petitioner states that United States regulatory law has never recognized the right of utilities to recover imprudent, highly speculative utility expenditures, citing Bluefield Water Works & Improvement Company v. Public Service Commission of the State of West Virginia, 262 U.S. 668, 678 (1923) and State of Missouri ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri, 262 U.S. 276, 289 (1923).

The petitioner has included detailed information from other court cases that recommend prudency review of requests by utilities for rate increases. The petitioner asserts that the concerns expressed in the various court cases discussed in this petition by the commissions vested with the responsibility of approving rate hike requests, tax increases, and recovery of new construction costs, are valid and applicable to the issue of imprudent ''stranded costs'' and grossly inadequate decommissioning projections. The petitioner recommends that an extensive prudency review of the costs incurred by power reactor licensees, their partners, and RECs, in the construction of nuclear power plants and subsequent decisions by the owners and operators in their continuing operation is mandated by the speculative and imprudent nature of corporate management.

Petitioner's Conclusion

The petitioner states that data clearly demonstrate that the majority of commercial nuclear power plants will not operate through their planned operating life of 40 years. The petitioner believes that while the power reactor licensees are entitled to recover a portion of decommissioning funding

through the rate and tax relief processes, they are not entitled to a full and complete rebate on ''stranded investments'' and shortfalls that will arise because funding targets for decommissioning have been underfunded. The petitioner believes that shareholders and board members of electric utilities and RECs, must assume responsibility for their business decision. The petitioner adds that to allow artificial definitions concerning ownership of nuclear power plants to insulate those who cogently made capital investments is immoral, unethical, and an endorsement of corporate socialism. The petitioner asserts that shareholders profit from imprudent investment decisions and are accorded relief when error of mismanagement becomes manifest. The petitioner believes that society, the nuclear industry, proportional owners and RECs, must assume responsibility for their investment strategies.

Remedies

The petitioner recommends the following remedies:

1. RECs, and proportional partners of nuclear generating stations that are not specified as the power reactor licensee must conduct a revised and updated site-specific analysis biennially based on prevailing realities that include a recognition that the NRC is redefining the concept of ''electric utility'; scientifically verifiable cost projections for the nuclear decommissioning ''target'; premature shutdowns of a substantial number of commercial nuclear generating stations; dry cask storage planning and construction; the asserted indisputable fact that Yucca Mountain will not be available at the time the spent fuel capacity has been breached at many operating nuclear generating stations; and, the asserted reality that the concept of regional low-level waste facilities has been supplanted by the extended operating life of ''low-level'' radioactive waste facilities.

2. Prevailing legal precedent undermines the notion that nuclear partnerships are entitled to full rate relief from present ratepayers and taxpayers for nuclear decommissioning costs. A sense of fair play, intergenerational equity, and risk sharing between ratepayers and taxpayers on one hand, and shareholders and board members on the other, necessitate that the NRC direct and extend the conditions and mandates promulgated in Section 50.75, Reporting and Recordkeeping for Decommissioning Planning, (a), (b), (c), (d), (e), and (f), to include all partners in nuclear generating stations, including board members of RECs; and,

3. After implementing remedies (1) and (2), NRC must compel proportional owners of nuclear power generating stations, including RECs, to conduct prudency reviews.

The petition, which consists of a 37-page brief, provides additional justification and support for the requested amendments not included in this **Federal Register** notice. The NRC requests that commenters consider, among other matters raised by petitioner, whether all of the remedies requested by petitioner are within the regulatory scope and jurisdiction of the NRC. By publishing this notice, the NRC is not concluding that it has jurisdiction over all of petitioner's requested remedies. Members of the public interested in filing comments on PRM–50–70 are urged to obtain a copy of the petition by writing to the address under **ADDRESSES** or by viewing the petition at the NRC website at http://ruleforum.llnl.gov.

Dated at Rockville, Maryland this 8th date of May 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–11955 Filed 5–11–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–91–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require installation of sleeving on the 90-minute auxiliary power unit (APU) standby power feeder cable at body station 1351. This proposal is prompted by a report of damage to the 90-minute APU standby power feeder cable caused by shifting of unrestrained cargo containers during flight. The actions specified by the proposed AD are intended to prevent damage to the 90-minute APU standby power feeder cable, which could result in arcing between the standby power feeder cable and the shroud of the APU fuel line, penetration of the fuel line shroud, and a consequent fire in the main deck floor above the aft cargo compartment.

DATES: Comments must be received by June 26, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice