

**CHAPTER 5A**

**NUCLEAR PLANT DECOMMISSIONING  
COST AND TRUST FUND REVIEW**

**Authority**

N.J.S.A. 48:2-13 and 48:2-21.

**Source and Effective Date**

R.1997 d.539, effective November 19, 1997.  
See: 29 N.J.R. 2637(a), 29 N.J.R. 5329(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 5A, Nuclear Plant Decommissioning Cost and Trust Fund Review, expires on May 18, 2003. See: 34 N.J.R. 4338(a).

**Chapter Historical Note**

Chapter 5A, Nuclear Plant Decommissioning Cost and Trust Fund Review, was adopted by R.1992 d.472, effective January 4, 1993. See: 23 N.J.R. 3239(b), 25 N.J.R. 193(a).

Pursuant to Executive Order No.66(1978), Chapter 5A was readopted by R.1997 d.539, effective November 19, 1997. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS**

**14:5A-1.1 Purpose and scope**

The rules contained in this chapter are designed to provide a mechanism of periodic review of the estimated costs

of decommissioning nuclear generating stations owned by New Jersey electric utilities for the purpose of assuring that adequate funds are available at the cessation of commercial operation of each of the facilities to assure completion of decommissioning activities. The rules also set forth decommissioning trust fund reporting requirements for electric utilities and procurement guidelines for the selection of investment managers and trustees, in order to provide the Board timely information related to its oversight of the utilities' management of the funds.

**14:5A-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Board” means the New Jersey Board of Public Utilities or its successor.

“Decommissioning” means to remove a facility safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of NRC operating license.

“DECON” means the method of decommissioning in which the equipment, structures, and portions of a facility and site containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use after cessation of operations.

“DEP” means the New Jersey Department of Environmental Protection or its successor.

“DOH” means the New Jersey Department of Health or its successor.

“DOTNJ” means the New Jersey Department of Transportation or its successor.

“DOTUS” means the United States Department of Transportation or its successor.

“Electric public utility” means all electric public utilities as defined by N.J.S.A. 48:2-13, but does not mean municipally owned electric public utilities.

“ENTOMB” means the method by which radioactive contaminants are encased in a structurally long-lived material, such as concrete. The entombed structure is appropriately maintained, and continued surveillance is carried out until the radioactivity decays to a level permitting unrestricted release of the property.

“Nonqualified fund” means a segregated fund established and maintained in the United States pursuant to an arrangement that qualifies as a trust under State Law and under 10 C.F.R. 50.75 for the purpose of providing funds for nuclear decommissioning. A utility under Section 1.468A of the Internal Revenue Code (IRC) of 1986, as amended, is allowed no deduction from its taxable income for contributions to the nonqualified fund.

“NRC” means the United States Nuclear Regulatory Commission or its successor.

“Qualified fund” means a segregated fund established and maintained in the United States pursuant to an arrangement that qualifies as a trust under State Law and under 10 C.F.R. 50.75 for the purpose of providing funds for nuclear decommissioning in accordance with Section 1.468A of the Internal Revenue Code (IRC) of 1986, as amended. A utility under Section 1.468A is allowed to deduct from its taxable income, IRS-approved contributions to the qualified fund subject to certain limitations.

“Ratepayer Advocate” means the New Jersey Division of the Ratepayer Advocate or its successor.

“SAFSTOR” means the method by which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use.

“Significant changes” means:

1. Any increases or decreases in the total original cost estimates greater than 2.5 percent or a change of \$1,000,000 or more in any single line item;
2. Addition of a cost category or deletion of a cost category;
3. A new cost assumption, or elimination of an assumption having a cost impact of \$1,000,000 or more;
4. A change in the date for the cessation of commercial operations at the nuclear generating station; or
5. A change in the choice of decommissioning options.

Amended by R.1997 d.539, effective December 15, 1997.  
See: 29 N.J.R. 2637(a), 29 N.J.R. 5329(b).

Amended “Board”, “DEP”, “Non-qualified fund” and “Qualified fund”; added “Ratepayer Advocate” and “Significant changes”; and deleted “Public Advocate”.

Amended by R.1998 d.186, effective April 20, 1998.  
See: 30 N.J.R. 27(a), 30 N.J.R. 1423(b).

In “Significant changes”, added 4 and 5.

## SUBCHAPTER 2. DECOMMISSIONING COST UPDATE

### 14:5A-2.1 Filing

(a) Every New Jersey electric public utility having an ownership interest in one or more nuclear generating stations shall file by January 1, 1996, and every four years thereafter, unless otherwise directed by the Board, a “Decommissioning Cost Update” (Update) with the Board for its consideration. Such Update filing shall be accompanied by the site-specific decommissioning cost information required by N.J.A.C. 14:5A-2.2. If the site-specific decommissioning cost study is not available on the required filing date, an extension for filing same shall be requested by the electric public utility indicating the reason(s) for the delay and the expected filing date which shall be no later than 60 days from the required filing date.

(b) Notwithstanding the provisions of (a) above, at or about five years prior to the scheduled cessation of commercial operation of a nuclear generating station a Decommissioning Cost Update shall be filed for that station(s) and a revised filing made thereafter to reflect any significant changes in the update as they become known.

(c) At such time as the licensee of a nuclear generating station, in which a New Jersey electric public utility has an ownership interest, applies to the NRC for termination of its license and submits a decommissioning plan under 10 CFR 50.82, that New Jersey electric public utility shall submit to the Board a copy of the decommissioning plan submitted to the NRC under 10 CFR 50.82. Following the permanent cessation of commercial operations, the New Jersey electric public utility shall also submit a copy of the post-shutdown decommissioning activities report (PSDAR) submitted to the NRC under 10 CFR 50.82.

(d) In the event that an electric public utility has had the decommissioning cost issue fully reviewed before the Board outside the context of this chapter within three years of the required date of an Update filing, the electric public utility may, in lieu of filing a “Decommissioning Cost Update” as required in (a) above, file a certification that no significant changes have occurred in the estimates presented since that review. Nevertheless, the electric public utility shall file with its certification information required by N.J.A.C. 14:5A-2.2 that was not addressed in that review.

(e) The Update shall be filed with the Secretary of the Board and shall be assigned a docket number for purposes of identification and document control. This filing shall include a summary of significant changes from the last Update filing by account and amount as well as relevant assumptions, for all of its nuclear generating units on an overall basis, and for each nuclear generating station. A cost estimate using the NRC formula shall also be included in the filing. (See 10 C.F.R. 50.75(c)(1) for the NRC formula.)

(f) In the event that an electric public utility has had its initial decommissioning cost estimates accepted by the Board within the context of this chapter, said electric public utility may, in lieu of filing a Decommissioning Cost Update as required in (a) above, file a certification as an option in (d) above or a summary of changes detailing the cost categories, assumptions, escalation factors and Update elements where significant changes have occurred and the reason(s) for the changes.

(g) For ease of comparison, the initial format shall be used consistently in subsequent filings unless there is compelling reason to deviate. Such compelling reason shall be expressly indicated in the filing.

(h) In the event that a New Jersey electric public utility decides to permanently cease commercial operations at a

nuclear generating unit(s), in which it has an ownership interest, prior to the scheduled cessation of commercial operations, that New Jersey electric public utility shall file with the Board a Decommissioning Cost update, as required in (a) above. Included in said update shall be an explanation of how the New Jersey electric public utility plans to fund the updated cost estimates of the decommissioning activities.

Amended by R.1997 d.539, effective December 15, 1997.

See: 29 N.J.R. 2637(a), 29 N.J.R. 5329(b).

In (a), added the second and third sentences; in (b), added the second sentence; and added (e) through (g).

Amended by R.1998 d.186, effective April 20, 1998.

See: 30 N.J.R. 27(a), 30 N.J.R. 1423(b).

Added (h).

1. The selection process must take into account, but is not necessarily limited to, the following considerations:

- i. Existing knowledge or demonstration of ability to obtain knowledge of Internal Revenue Service Rules relating to Nuclear Decommissioning Costs (26 CFR parts 1 and 602 SEC 468A);
- ii. Performance record in their investment discipline including the fixed income area;
- iii. Cash management capabilities;
- iv. Investment manager and trustee fee structures;
- v. Organizational commitment to keep abreast and maintain a presence in issues related to nuclear decommissioning trust fund management;
- vi. Demonstration of sufficient resources to satisfactorily service the fund;
- vii. Demonstration of a firm's ability to ensure that the assets contained in the Fund are clearly identifiable and segregated for the benefit of the nuclear facility and will not be considered assets of the managing or trustee institution;
- viii. The extent to which a particular firm expands the market of existing managers or trustees to include qualified New Jersey based firms and small and minority owned firms or otherwise provides a unique quality or creates a new and useful niche;
- ix. Sufficient assets or evidence of creditworthiness to ensure the value of the funds being managed or held in trust; and
- x. The number of clients and the total dollar value of funds currently managed, how long the firm has been in business, and the credentials of the fund managers.

2. Each electric utility must demonstrate to the Board that Requests For Proposals (RFPs) are made widely available to interested and qualified investment managers and trustees, both in and out of state.

(b) Electric utilities shall notify the Board at least four weeks prior to the solicitation of new investment managers or trustees. Said notification shall include:

- 1. A copy of the Requests For Proposals to be sent to potential investment managers and trustees; and
- 2. A list of firms that will be sent RFPs and the manner in which the utility chose the distribution.

(c) Further notification to the Board is required as follows:

- 1. Identification of the firms that responded to the RFPs, the firms chosen to be interviewed and the reason for selection; and

2. Final selection of the firms and the reason for selection including a discussion of the criteria as established pursuant to (a) above.

(d) Copies of all executed trust or fund management agreements, or amendments thereto, shall be filed with the Board.

**14:5A-4.2 Decommissioning trust annual reports**

(a) On or before April 15 of each year, each electric utility shall file with the Board:

1. An annual decommissioning trust fund report which shall provide for each nuclear generating station in which the electric utility has an ownership interest:

- i. The total end of year market value of the qualified and non-qualified trust funds;
- ii. The quarterly and annual pretax and after tax return earned on each fund for the year as well as the cumulative returns from January 1, 1991, through the end of the calendar year for which the decommissioning annual report is being issued; from the inception of each fund through December 31, 1990, the cumulative annual returns of the funds or other cumulative return data as available;
- iii. A comparison of the information provided in (a)ii above to an appropriate performance benchmark, as well as description and support for the benchmark;
- iv. The utility's strategy for maximizing return while monitoring and managing portfolio risk and specific investment guidelines imposed on fund managers;
- v. The portfolio's asset mix, indicating types of securities, durations and quality ratings where appropriate;
- vi. A financial reconciliation from the beginning of the current 12 month investment period through the end of the current 12 month period reflecting each plant's qualified and non-qualified funding history listed separately for the year to date and from January 1, 1991 to date;

vii. An accounting of all manager and trustee fees, commissions and taxes incurred in maintaining the decommissioning trust for the year;

viii. A statement of the assumed return built into the calculation of the funding annuity built into present rates;

ix. For the prior calendar year and on a cumulative basis from January 1, 1991, a computation of the shortfall or excess between the actual market value of the fund and the value of the fund had the rate of return embedded in annual annuities built into rates been realized; and

x. For jointly-owned stations in which there is shared ownership with one or more out-of-State utili-

ties, the present amount of funds set aside by each out-of-State utility for decommissioning each station as well as the annual level of contribution toward a decommissioning fund; and

xi. Based on the fund balances, earnings rates and decommissioning cost updates as of the report date, for each nuclear generating station, a projection of the shortfall or excess of the funds available for decommissioning as of the date it is expected to occur.

2. A copy of the utility's most recent certification reports to the NRC for each wholly or partially-owned station.

(b) For jointly-owned stations in which there is shared ownership with one or more out-of-State utilities the information required by (a) above may be filed as late as May 15, if necessary, to allow sufficient time to obtain that information from the out-of-State joint owners.

(c) Upon receipt of the initial Annual Reports filed pursuant to (a) above, the Board shall review the trust fund investment guidelines of each electric utility and consider the need for establishment of definitive generic investment guidelines.

Amended by R.1997 d.539, effective December 15, 1997.  
See: 29 N.J.R. 2637(a), 29 N.J.R. 5329(b).

#### **14:5A-4.3 Distribution of trust fund report**

A copy of the reports required by N.J.A.C. 14:5A-4.2(a)1 and 2 shall also be provided, by each utility, to the Ratepayer Advocate, DEP, and the municipality in New Jersey where the nuclear facility is located.

Amended by R.1997 d.539, effective December 15, 1997.  
See: 29 N.J.R. 2637(a), 29 N.J.R. 5329(b).