

**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.2003 d.227, effective May 8, 2003.
See: 34 N.J.R. 4338(a), 35 N.J.R. 2491(a).

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 November 4, 2008. See: 40 N.J.R. 3594(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, Nuclear Plant Decommissioning Cost and Trust Fund Review, was readopted by R.1997 d.539, effective November 19, 1997. See: 29 N.J.R. 2637(a), 29 N.J.R. 5329(b).

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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).

14:5A-2.2 Update elements

(a) The Update filing shall consist of the following elements, each of which shall be accompanied by technical support sufficient to provide the Board with a basis to evaluate the filing:

1. For the initial filing on January 1, 1996, a generic assessment of the current status and developing trends on all activities that affect the costs of nuclear facility decommissioning. For each subsequent filing made pursuant to this chapter, an update of the current status and trends which have developed concerning all activities that affect the cost of nuclear facility decommissioning since the latter of the previous Decommissioning Cost Update filing or most recent base rate case review. The activities required to be assessed under this paragraph shall include, at a minimum, the following:

- i. Actual facility decommissioning costs both foreign and domestic;
- ii. Development and use of state of the art equipment and techniques such as robotics, heavy duty cutting methods, computer monitoring, remote observation systems and chemical cleaning methods which will increase efficiency and/or reduce radiation exposures, waste processing methods which reduce the volume of decommissioning wastes, and other innovations that will affect the decommissioning process and/or related costs which have been developed since the last estimate;
- iii. Development of both high level and low level radioactive waste disposal sites and their cost or pricing structures;
- iv. Transportation methods and hardware for transporting radioactive material;
- v. Applicable regulatory changes undertaken or specific clean up standards adopted by the NRC, DEP, DOH, DOTNJ, DOTUS or other appropriate governmental bodies and applicable recommendations by industry organizations; and
- vi. Insurance cost estimates to cover potential liabilities during decommissioning.

2. For each nuclear generating facility owned in whole or in part by an electric public utility, the utility shall provide the latest cost estimate for decommissioning, along with all supporting documentation. In support of the information filed under this paragraph each utility shall indicate the following for each facility:

- i. The current projected date for cessation of commercial operation and the current projected date for commencement and completion of decommissioning activities;
- ii. The status of any efforts by the utility to extend the date for cessation of commercial operation, and changes in plant status;

iii. The planned decommissioning option to be employed upon cessation of commercial operation, from the following list of options and the justification for the choice of that particular option:

- (1) DECON;
- (2) ENTOMB;
- (3) SAFSTOR; or
- (4) Other options as deemed appropriate by the NRC, electric public utility and/or other applicable entities;

iv. The source of and supporting data for the decommissioning cost estimate, either resulting from a site-specific study of the particular facility or via generic NRC guidelines or some other means:

- (1) In the event that the decommissioning cost estimate provided pursuant to this chapter is based upon a site-specific study, the electric public utility must provide that study.
- (2) In the event that the decommissioning cost estimate provided pursuant to this chapter is based upon generic NRC guidelines, the electric public utility must provide all information which led the utility to translate these guidelines into the particular cost estimate along with an explanation and supporting documents of all adjustments made to the NRC generic guidelines for each facility;

v. The decommissioning cost estimate and assumed commercial operation cessation date which formed the basis for the existing level of decommissioning funding in the public electric utility's rates;

vi. A description of the specific manner in which the information filed pursuant to (a)1 above affects the decommissioning cost estimate provided pursuant to this chapter;

vii. An explanation of the method used to calculate the annual contribution to the external funds including inflation rates used to estimate future value and yield rates estimated for the external fund;

viii. The remaining spent fuel storage capacity and need, if any, for expanded storage ; and

ix. The escalation factors and contingency factors used in the calculation.

Amended by R.1997 d.539, effective December 15, 1997.
See: 29 N.J.R. 2637(a), 29 N.J.R. 5329(b).
Added (a)2ix.

14:5A-2.3 Joint submissions

(a) For purposes of avoiding the filing of duplicative information, the electric public utilities subject to this chapter may jointly file information with respect to the following:

1. The generic industry activities required in N.J.A.C. 14:5A-2.2(a)1; and

2. In the event of co-ownership of a nuclear facility, the information concerning cost estimates pursuant to N.J.A.C. 14:5A-2.2(a)2, excluding N.J.A.C. 14:5A-2.2(a)2v, vi and vii which is required to be filed by each public electric utility unless such information is identical.

SUBCHAPTER 3. DECOMMISSIONING COST UPDATE PROCEDURES

14:5A-3.1 Public notification

(a) Concurrent with the filing with the Board as required in this chapter, each utility shall provide public notice of said filing in newspapers of general circulation in its service territory.

(b) A copy of the filing shall also be provided to the Ratepayer Advocate, DEP, and the municipality in New Jersey where the nuclear facility is located.

(c) Each utility shall make available for distribution to members of the public upon request an Executive Summary of the filing made pursuant to this chapter. Said Executive Summary shall:

1. Summarize the information supplied pursuant to each section of N.J.A.C. 14:5A-1 and 2;
2. Indicate procedures for comment as set forth in N.J.A.C. 14:5A-3.2; and
3. Not exceed 10 pages in length.

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-3.2 Comment period and Board review

(a) For a period ending 60 days from filing of the Update or as otherwise extended by action of the Board, interested parties may submit comments to the Board.

(b) Following receipt and review of comments as well as the Update and other related additional information as requested, the Board shall issue a Board Order with its findings.

(c) In the event that the Board determines a need for a formal proceeding to review the present funding level for any of the trusts, said proceeding shall follow the procedures set forth in N.J.A.C. 14:5A-3.3 through N.J.A.C. 14:5A-3.6.

1. Within 10 days of the Board's determination of the need for a formal proceeding pursuant to paragraph (c) above, the utility shall file with the Board a proposed form of public notice.

14:5A-3.3 Party status and intervention

(a) The Ratepayer Advocate and the DEP shall be granted party status.

(b) Any person may make a Motion for Intervention to the Board with respect to the Update proceeding. Such Motion shall be decided pursuant to rules set forth in N.J.A.C. 1:1-16.

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-3.4 Discovery

(a) Any party or intervenor as established in N.J.A.C. 14:5A-3.3 may propound discovery upon any public electric utility regarding its respective filings.

(b) The schedule for the filing of supplemental information, or testimony or propounding discovery and for responses thereto shall be established by the Board subsequent to its determination as to the need for a formal proceeding.

14:5A-3.5 Public and evidentiary hearings

(a) Within 90 days of the initiation of a formal proceeding, the Board shall schedule and convene a public hearing, upon proper notice, at which members of the public and interested parties shall be provided the opportunity to submit comments with respect to the filing.

(b) The Board shall convene evidentiary hearings and additional public hearings as necessary concerning the filing, and entertain written position papers from the parties.

(c) All notices of public or evidentiary hearings shall be published by the utility in conformance with the requirements set out in N.J.S.A. 48:2-32.2 and 48:2-32.4 and N.J.A.C. 14:1-5.12(b) through (e).

14:5A-3.6 Findings

(a) Subsequent to the conclusion of hearings, the Board shall issue an order which will address the following issues:

1. A summary of the state of industry experience and technology concerning nuclear facility decommissioning;
2. Findings as to the continued efficacy of present decommissioning funding levels for each of the nuclear facilities wholly or partly owned by New Jersey electric utilities and subject to the formal review; and
3. Methods for revising funding levels where deemed appropriate.

SUBCHAPTER 4. DECOMMISSIONING TRUST FUND REVIEW

14:5A-4.1 Investment manager and trustee procurement procedures

(a) In the procurement, by an electric utility, of any new decommissioning fund trustees and investment managers, bidding procedures which include public notification must be employed.

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)lii 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 joint

owners, the present amount of funds set aside by each out-of-State joint owner 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 a shared ownership with one or more out-of-State joint owners, 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).

Amended by R.2003 d.227, effective June 2, 2003.

See: 34 N.J.R. 4338(a), 35 N.J.R. 2491(a).

Substituted references to joint owners for utilities throughout.

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).