Proposed Rules

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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–50–119; NRC–2019–0083]

Access to the Decommissioning Trust Fund for the Disposal of Large Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking, dated February 22, 2019, submitted by Gerard P. Van Noordennen on behalf of EnergySolutions, LLC (the petitioner). The petition was docketed by the NRC on March 20, 2019, and was assigned Docket No. PRM–50–119. The petition requested that the NRC revise its regulations to allow access to the decommissioning trust fund for the removal of major radioactive components before the permanent cessation of operations and revise the definition of *Decommissioning.* The NRC is denying the petition because the petitioner does not raise a significant safety or security concern, and this subject area is adequately covered by existing regulations. The NRC's current regulations and oversight activities continue to provide for the reasonable assurance of adequate protection of public health and safety.

DATES: The docket for PRM–50–119 is closed on February 4, 2022.

ADDRESSES: Please refer to Docket ID NRC–2019–0083 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0083. Address questions about NRC Docket IDs to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Solomon Sahle, telephone: 301–415–3781; email: *Solomon.Sahle@nrc.gov,* or Shawn Harwell, telephone: 301–415–1309; email: *Shawn.Harwell@nrc.gov.* Both are staff of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. The Petition

Section 2.802 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Petition for rulemaking—requirements for filing,'' provides an opportunity for any interested person to petition the NRC to issue, amend, or rescind any regulation. On February 22, 2019, the NRC received a petition for rulemaking (PRM) from Gerard P. Van Noordennen on behalf of EnergySolutions, LLC (ADAMS Accession No. ML19079A293). The petition requested the NRC revise the definition of *Decommissioning* in § 50.2, ''Definitions,'' and amend § 50.82, ''Termination of license,'' to allow access to the decommissioning trust fund to pay for the disposal of ''major radioactive components'' before the permanent cessation of operations at nuclear power plants. That term is currently defined in § 50.2: ''*Major radioactive components* means, for a nuclear power reactor facility, the reactor vessel and internals, steam generators, pressurizers, large bore reactor coolant system piping, and other large components that are radioactive to a comparable degree.''

The petition suggested that granting the petition would remove unnecessary burden from licensees who store major radioactive components on their sites during plant operations because they have limited operating funds and cannot use decommissioning funds for the disposal of these components.

The NRC published a notice of docketing and request for comment in the **Federal Register** on June 12, 2019 (84 FR 27209).

II. Public Comments on the Petition

A. Overview of Public Comments

The public comment period closed on August 26, 2019. The NRC received a total of six public comment submissions, with six unique comments from the general public and industry. Five commenters supported the petition and one commenter opposed the petition.

B. NRC Response to Public Comments

Comment: One commenter suggested an approach to allow the use of excess decommissioning trust funds for disposal of major radioactive components. In this approach, the NRC could allow operators to reallocate excess decommissioning trust funds for operational expenses through a two-step process: (1) Excess funds are identified and returned from holder; and (2) operator uses returned funds to manage operational expenses, including disposal of large components.

NRC Response: The process described in the comment is available now, upon request by a licensee through the exemption process (§ 50.12, ''Specific exemptions''), which requires a site-specific review and approval by the NRC. A projected excess in the decommissioning trust fund is one factor that the NRC would consider in reviewing an exemption request. Other potential factors include the size of the

excess compared to the site-specific cost estimate (SSCE), whether the expense is included in a SSCE, evidence that funds have been collected or set aside for the activity in a comingled decommissioning trust fund, and availability of rate collection as a means to resolve a shortfall in radiological decommissioning funding. Any decision on an exemption request to use decommissioning funds to dispose of major radioactive components during operation would be based on a totality of the information in the request and any other information of which the NRC is aware. It should be noted that cost estimates for decommissioning are less accurate the further out in time the plant is from decommissioning. Thus, a release of funds without NRC approval whenever an excess is identified by the licensee would diminish decommissioning funding assurance, even if the excess is identified by comparison to a SSCE. The NRC has previously addressed this issue in the denial of PRM–50–88 (73 FR 62220; October 20, 2008).

Comment: One commenter stated that operators are making a business decision to store large components during a plant's operational period and dispose of the major radioactive components with decommissioning trust funds once the decommissioning period begins, despite storage and monitoring costs. The commenter states that this results in a potential for loss of control of radiological material, if improperly stored/monitored.

NRC Response: Existing NRC regulations ensure adequate control of radiological material, including major radioactive components that have been removed from service. Proper storage and monitoring of radiological material is addressed through the NRC's onsite inspection procedures.

Comment: One commenter stated that the NRC should consider early use of decommissioning trust funds by licensees if the disposal costs are specifically included in the cost estimate. The commenter stated that this could be achieved either by the licensee preparing a SSCE that included the items for which excess funds are to be used, or by the NRC revising the generic formula for trust fund calculation to require additional funds to account for these waste volumes, effectively increasing the estimated waste volume factor of the formula. The commenter noted that a change to the generic formula in this manner is problematic because some basis would be required to account for later reducing the waste volume based on operational disposal activities, which may be an ongoing or repeated activity during the operational life of a facility.

NRC Response: The NRC agrees with the commenter that a revision to the § 50.75 Table of Minimum Amounts would be problematic. The formulas provided in this table are generic and designed to provide a reasonable estimate of radiological decommissioning costs for the facility. Revising the table to account for the disposal of major radioactive components prior to decommissioning is difficult due to several factors, including site-specific variations in the generation and disposal of these components. As such, the Table of Minimum Amounts has not been updated for over 30 years. However, the NRC is considering updates to the generic decommissioning funding formula to make it more reflective of current cost considerations as part of the proposed rule, ''Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning'' (RIN 3150–AJ59), and will seek public comment on the matter. Nonetheless, currently licensees can use the existing formula, or an SSCE, as part of a demonstration that excess funds exist in the decommissioning trust fund to support either an exemption request or for other purposes, such as the reallocation of other funds. Projected excess funds would be one factor the NRC would consider when reviewing an exemption request. The staff notes the determination of excess funds relies on long-term projections that may prove inaccurate because unpredictable changes in economic conditions could result in future shortfalls in the decommissioning trust fund. Therefore, in reviewing an exemption request, the NRC would consider the totality of information provided in the request and any other information of which the NRC is aware.

Comment: One commenter stated that an ''innovative financial approach'' that could provide for early removal of large parts would be the establishment by the NRC of a process whereby a licensee can have access to excess decommissioning trust funds (where ''excess'' should consider spent fuel management funds, whether comingled or not) that can only be used for specific purposes by the licensee, such as management of large component/operational wastes or other items that will contribute to the ultimate decommissioning of the facility.

NRC Response: Under the NRC's existing regulatory framework, licensees can request access to excess decommissioning funds on such a basis through the exemption process.

Comment: Three commenters stated that nuclear utilities should have the flexibility to use decommissioning trust fundsduring operations to facilitate the timely disposal of these components in acost-effectivemanner to maximize the reduction in disposal cost and therefore aid in ensuringthat ample decommissioning trust funds remain available when fulldecommissioning takes place.

NRC Response: If excess decommissioning trust funds are available (*e.g.,* as determined by comparing decommissioning fund growth against an SSCE), then licensees may use existing procedures to access the available funds. If excess funds are not available, then licensees may use operating revenues or continue to store the components on site until such time as either excess funds are available (and then request an exemption to use those funds) or until decommissioning begins.

Comment: Two commenters stated that the industry and NRC have experience with thedecommissioning of nuclear power plants and the time has come to modernize the decommissioning regulatory process.

NRC Response: The NRC is currently pursuing decommissioning improvements in a separate rulemaking, ''Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning'' (82 FR 13778).

III. Reasons for Denial

The NRC is denying the petition because a licensee may access the decommissioning trust fund to pay for the disposal of major radioactive components (1) by requesting reimbursement when submitting their decommissioning cost estimate per § 50.82 or (2) by requesting an exemption under § 50.12 to permit withdrawal from the decommissioning trust fund prior to decommissioning. Although the Commission has stated that trust fund withdrawals for disposal of major radioactive components would be granted only ''in extraordinary circumstances'' (73 FR 62222; October 20, 2008), the NRC reviews each exemption request based on the merit of the facts provided in the request.

While the petitioner noted that only ''excess'' funds would be used from the decommissioning trust fund to pay for the disposal of major radioactive components, the NRC notes that whether there is an excess would be based on economic projections. Economic projections are less accurate the further out in time they attempt to project, and, therefore, changes in economic conditions combined with

withdrawals from the decommissioning trust fund could potentially result in future shortfalls in the fund. Nevertheless, a projected excess is one factor that the NRC would consider in reviewing an exemption request. Other potential factors include: The size of the excess compared to the SSCE, whether the expense is included in a SSCE, evidence that funds have been collected or set aside for the activity in a comingled decommissioning trust fund, and availability of rate collection as a means to resolve a shortfall in radiological decommissioning funding. Any decision on an exemption request to use decommissioning funds to dispose of major radioactive components during operation would be based on a totality of the information in the request and any other information of which the NRC is aware. These circumstances are site-specific and dependent on the unique financial status of each licensee.

The staff believes it would be difficult to develop generally applicable requirements to address the use of decommissioning trust funds for this purpose and therefore, more efficient to review such requests on a case-by-case basis. Therefore, the staff considers an exemption to be an adequate means for licensees to request a withdrawal from their decommissioning trust fund for the disposal of major radioactive components. If the staff sees an increase in exemption requests to withdraw decommissioning funds prior to decommissioning, then the NRC could reconsider whether addressing the issue through rulemaking would reduce the need for exemptions and be more efficient for the agency. Such reconsideration will include any experience and insights the staff has gained in evaluating exemption requests at that time.

Additionally, some licensees successfully pursued reallocating funding streams that would otherwise have been added to their decommissioning trust fund by establishing ''sub-accounts'' in their decommissioning trust funds. Such sub-accounts are not regulated by the NRC and, therefore, can be used at the discretion of the licensee at any time during operations or decommissioning. For rate-regulated licensees, these sub-accounts are typically funded with Public Utility Commission-authorized rate collections once it is established that the trust dedicated to radiologically decommissioning is sufficiently funded in accordance with NRC regulations. While non-rate-regulated (*i.e.,* merchant) licensees do not have access to rate collection, they may still fund such sub-accounts through alternate means or request a reallocation of funds across their decommissioning trust fund accounts using the 10 CFR 50.12 exemption process. The NRC is denying the petition because it does not raise a significant safety or security concern and the requested amendments are not necessary to enable licensees to access excess decommissioning funding prior to decommissioning for the purpose of disposal of major radioactive components under existing regulations in 10 CFR part 50.

IV. Conclusion

For the reasons cited in this document, the NRC is denying PRM–50–119. The NRC reaffirms that its existing regulations continue to provide reasonable assurance of adequate protection of public health and safety.

Dated: January 24, 2022.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2022–01685 Filed 2–3–22; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 429 and 431

[EERE–2020–BT–TP–0011]

RIN 1904–AE62

Energy Conservation Program: Test Procedure for Electric Motors; Extension of Comment Period

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: On December 17, 2021, the U.S. Department of Energy (''DOE'') published a notice of proposed rulemaking (''NOPR'') on potential amendments to its test procedure for electric motors. The NOPR provided an opportunity for submitting written comments, data, and information on the proposal by February 15, 2022. DOE received requests from the National Electrical Manufacturers Association (''NEMA'') and the Hydraulic Institute (''HI'') on January 25, 2022, and January 26, 2022, respectively, asking DOE to extend the public comment period for 30 additional days. DOE has reviewed these requests and is granting an extension of the public comment period to allow public comments to be submitted until February 28, 2022.

DATES: The comment period for the NOPR published on December 17, 2021 (86 FR 71710), is extended. DOE will accept comments, data, and information regarding this request for information (RFI) received no later than February 28, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–TP–0011, by any of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Email: ElecMotors2020TP0011@ee.doe.gov.* Include the docket number EERE–2020–BT–TP–0011 or regulatory information number (''RIN'') 1904–AE62 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID–19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov index.* However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket?D=EERE-2020-BT-TP-0011.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building