

§4355. Decommissioning trust fund

1. Trustee. The decommissioning fund committee shall select a trustee or trustees to execute the policies set by the decommissioning fund committee and manage the money within a decommissioning trust fund in order to ensure that it will be available when needed and, insofar as possible, consistent with protection of the principal, so that it may grow to keep pace with inflation or faster. Preference may be given to financial institutions incorporated in the State if consistent with their fiduciary responsibility, but only if they meet the criteria for trustees established by the decommissioning fund committee. That committee may, by a majority vote of its entire membership, change trustees at any time. Any trustee is subject to the same duties and may exercise the same powers as trustees under Title 18-C, Article 7, and the provisions of the decommissioning trust to the extent that they are not inconsistent with this subchapter. The trustee may appoint subsidiary financial managers, subject to approval by the decommissioning fund committee. Any fees charged by the trustee are subject to review by the commission.

[PL 2017, c. 402, Pt. C, §100 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Tax exemptions. The following tax exemptions apply to the decommissioning trust fund.

A. Payments to a decommissioning trust fund shall be considered a necessary operating expense of the licensee and shall be tax deductible for state income tax purposes. All income of the fund shall be exempt from state income taxation, as long as the fund is to be used exclusively for the purposes of decommissioning and the licensee may not use the fund for any other purpose. [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Payments to a decommissioning trust fund are deemed to be a necessary operating expense to the licensee and exempt from federal income tax. It is the legislative intent that all income of the fund be exempt from federal income taxation. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Restrictions. The following restrictions apply to the decommissioning trust fund.

A. All funds collected by any licensee for decommissioning shall be immediately segregated from the company's assets and amounts not subject to refund or required to pay tax liabilities shall be transferred to the trustee for placement in the decommissioning trust fund established for the licensee's plant. Amounts collected for decommissioning, but subject to refund or required to pay tax liabilities, shall be deposited in a separate escrow account. [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. The assets in a decommissioning trust fund may be invested only in secure assets as follows:

- (1) The bonds, notes, certificates of deposit or other obligations issued or guaranteed by the United States or by any agency or instrumentality of the United States;
- (2) The bonds, notes, certificates of deposit or other obligations issued or guaranteed by any state or by any agency, instrumentality or political subdivision of any state, provided that securities are rated within the 2 highest grades by any rating service approved by the Superintendent of Financial Institutions;
- (3) The bonds and other obligations of any United States corporation, provided that they are rated within the 2 highest grades by any rating service approved by the Superintendent of Financial Institutions; or
- (4) Until a definitive final determination has been made by the Federal Government that the income of the fund is exempt from federal income taxation, the assets in the fund may be invested only in securities exempt from federal income taxation.

The assets in a fund shall not be invested in the securities of the owner of any nuclear power plant. The decommissioning fund committee may impose such other restrictions as it determines

necessary or desirable. [PL 1987, c. 141, Pt. A, §6 (NEW); PL 2001, c. 44, §11 (AMD); PL 2001, c. 44, §14 (AFF).]

C. Except as provided in section 4354, a decommissioning trust fund shall be administered only by persons not normally involved with operations of the licensee or any owner of a nuclear power plant within the State. [PL 1987, c. 141, Pt. A, §6 (NEW).]

D. Neither the licensee nor any other owner of any nuclear power plant in the State may receive any benefit from funds remaining in the decommissioning trust fund after completion of decommissioning. [PL 1987, c. 141, Pt. A, §6 (NEW).]

E. All income of a fund shall be accumulated and added to the principal of the fund, except as otherwise provided in subsection 5. [PL 1987, c. 141, Pt. A, §6 (NEW).]

F. Any indenture of trust governing the decommissioning trust fund is subject to review and approval by the commission. That indenture of trust shall contain a provision that it shall be amended as necessary to conform to any future changes in state law or rule. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW); PL 2001, c. 44, §11 (AMD); PL 2001, c. 44, §14 (AFF).]

4. Contributions to the fund. The trustee of a decommissioning trust fund shall bill the licensee operating the nuclear power plant for which the fund was established and the licensee shall make payments to the trustee of the fund in amounts and on a schedule determined by the commission in accordance with section 4353, subsection 4.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

5. Expenditures from the fund; payments for costs of decommissioning. At the time of decommissioning, the decommissioning fund committee shall authorize the trustee to make payments as necessary from the fund to the licensee to cover actual decommissioning expenses in accordance with the decommissioning plan authorized by the United States Nuclear Regulatory Commission or its successor. The decommissioning fund committee may not approve any withdrawal for this purpose prior to completion of decommissioning, unless the physical decommissioning plan has been received and reviewed by the commission under section 4353, subsection 7.

The decommissioning fund committee may authorize withdrawals from the fund as necessary to pay reasonable expenses for administering the fund. No other withdrawal may be made prior to the commencement of decommissioning without the approval of the commission and unless the withdrawal is for the purpose of paying reasonable expenses related to decommissioning.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

6. Expenditure of money remaining after decommissioning. Upon termination of decommissioning, the commission shall conduct a final audit of the decommissioning trust fund. The commission may by rule, if the public interest requires, establish a decommissioning contingency reserve at that time. If there are assets remaining in the fund attributable to a given plant, after its decommissioning has been completed, those assets must be returned, in proportion to their payments, to the owners and any other persons who originally made payments to the licensee for decommissioning purposes in accordance with the order or orders of any regulatory agency having jurisdiction. No portion of the remaining assets in a fund may accrue to the benefit of the licensee.

A transmission and distribution utility in the State that receives remaining decommissioning funds under this subchapter shall distribute the funds equitably, under the guidance of the commission, to its customers.

[PL 1999, c. 398, Pt. A, §100 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

7. Commission review for licensee-established committee. Notwithstanding any other section of this subchapter, if the decommissioning fund committee is established by the company under section 4354, subsection 1, withdrawals from the fund shall be reviewed and approved by the commission. No

withdrawal may be approved, except for the purpose of paying reasonable expenses related to decommissioning or to the administration of the fund.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

8. Separate fund for each plant. There shall be a separate decommissioning trust fund for each nuclear power plant covered by this subchapter. The assets of these funds shall not be commingled in any way.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A100 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 2001, c. 44, §11 (AMD). PL 2001, c. 44, §14 (AFF). PL 2017, c. 402, Pt. C, §100 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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