

**§4353. Decommissioning financing plans; physical decommissioning plan**

**1. Submission of plans.** Decommissioning financing plans shall be submitted as follows.

A. Any licensee receiving a certificate of public convenience and necessity under section 3132 for a nuclear power plant shall submit a decommissioning financing plan for the plant to the commission not less than one year prior to beginning commercial operation of the plant. [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Any licensee operating a nuclear power plant on July 13, 1982, shall submit a proposed decommissioning financing plan for the plant to the commission as soon as possible, but not later than September 11, 1982, or such later date as the commission may consider appropriate. [PL 1987, c. 141, Pt. A, §6 (NEW).]  
[PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Content of plan.** A decommissioning financing plan submitted under subsection 1 shall include:

A. An estimate of the time of closing of the nuclear power plant; [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. An estimate of the cost of decommissioning the plant expressed in dollars current in the year the plan is prepared and based upon an engineering report issued any time within 3 years of the date the plan is submitted to the commission; [PL 1987, c. 141, Pt. A, §6 (NEW).]

C. The share of the estimated decommissioning expenses attributed to each utility to which the plant supplies power; [PL 1999, c. 398, Pt. A, §98 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. Plans for periodic review and updating of the plan, including the cost of decommissioning estimated under paragraph B, consistent with subsection 6; [PL 1987, c. 141, Pt. A, §6 (NEW).]

E. Plans for establishing as soon as possible a decommissioning trust fund adequate to pay the cost estimated under paragraph B, consistent with subsection 4 and section 4355; [PL 1987, c. 141, Pt. A, §6 (NEW).]

F. Plans and options for insuring against or otherwise financing any shortfall in the fund resulting from a premature closing of the nuclear power plant; [PL 1987, c. 141, Pt. A, §6 (NEW).]

G. Reasonable assurance of responsibility in the event of insufficient assets in accordance with section 4356; [PL 1987, c. 141, Pt. A, §6 (NEW).]

H. A general description of the stages by which decommissioning is intended to be accomplished, but only at the level of detail necessary to support the cost estimate of paragraph B; [PL 1987, c. 141, Pt. A, §6 (NEW).]

I. If the licensee intends to establish its own decommissioning fund committee, a statement of its intent to do so, together with its proposed membership and a copy of the proposed decommissioning trust and its plan for implementing the trust and establishing the committee; [PL 1987, c. 141, Pt. A, §6 (NEW).]

J. A fully executed decommissioning financing agreement between the licensee and each owner, evidencing each owner's acceptance of its respective share of the ultimate financial responsibility for decommissioning. In satisfaction of this requirement, the licensee may submit existing ownership agreements together with documentation from each owner of the applicability of the agreement to the case of financial responsibility for decommissioning; and [PL 1987, c. 141, Pt. A, §6 (NEW).]

K. Any other information related to the financing of decommissioning which the commission requests. [PL 1987, c. 141, Pt. A, §6 (NEW).]  
[PL 1999, c. 398, Pt. A, §98 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

**3. Approval of plan.** The plan shall be approved as follows.

A. The commission shall conduct a public hearing on the proposed decommissioning financing plan. [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. The commission shall approve the decommissioning financing plan if it finds that the licensee, in the judgment of the commission, has provided reasonable assurance that:

(1) The estimated time of closing of the nuclear power plant and the estimated cost of decommissioning are reasonable;

(2) The share of the estimated cost of decommissioning for each utility to which the plant supplies power is reasonable;

(3) The principal and income that will have accumulated in the decommissioning trust fund at the estimated time of closing the plant will be adequate to cover the estimated cost of decommissioning, plus the expenses of administering the fund;

(4) The provisions of the proposed form of the decommissioning trust fund will ensure that the funds in the trust are judiciously invested and will adequately protect the funds until decommissioning is completed and, in the event the licensee proposes to establish its own decommissioning fund committee, that the licensee-established committee will ensure that the funds in the trust are judiciously invested and will adequately protect the funds until decommissioning is completed;

(5) The assets in the fund can not be withdrawn unless approved by the decommissioning fund committee under section 4355, subsection 5, prior to completion of decommissioning;

(6) Contributions to the fund are equitably spread over the useful life of the plant to the extent feasible;

(7) The plans and options for insuring against or otherwise financing any shortfall in the fund resulting from a premature closing are adequate and reasonable;

(8) The owners are legally bound to accept their respective shares of the ultimate financial responsibility for decommissioning and the plan reflects full compliance with section 4356; and

(9) The plan will periodically be reviewed and revised to reflect more closely the costs and available techniques for decommissioning. This update must occur at least every 5 years. [PL 1999, c. 398, Pt. A, §99 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

C. If the commission finds that the decommissioning financing plan does not meet the criteria under paragraph B, the commission shall reject the plan and order that it be modified as the commission determines necessary to meet those criteria. [PL 1987, c. 141, Pt. A, §6 (NEW).]

D. The commission shall take final action on the proposed decommissioning financing plan within 180 days after the filing date. The filing date shall be the date when the commission notifies the applicant that the filing is complete. If the commission does not notify the applicant of any deficiencies in the information in the application within 60 days of receipt, the application shall be deemed complete as of the date of receipt. [PL 1987, c. 141, Pt. A, §6 (NEW).]

E. If the licensee requested approval of a licensee-established decommissioning fund committee, the commission shall approve the plan, including the plans for implementing a licensee decommissioning fund committee and a decommissioning trust fund, with such modifications as the commission finds necessary to meet the criteria of paragraph B, but only if the commission

finds that the plans will reasonably ensure that the responsibilities and duties of section 4354, subsection 6, will be carried out, that the funds will be managed in order to ensure that they will be available when needed, and that the funds will only be used for decommissioning expenses and the costs of administering the trust fund. [PL 1987, c. 141, Pt. A, §6 (NEW).]  
[PL 1999, c. 398, Pt. A, §99 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

**4. Cost of decommissioning.** Based upon the plan, the commission shall establish the cost of decommissioning of any nuclear power plant located in the State and shall establish a schedule of monthly payments into the decommissioning trust fund established for that plant as necessary and convenient to meet that cost of decommissioning at the time of closing. The cost of decommissioning shall not include the cost of final disposal of spent nuclear fuel. The schedule shall be established so that contributions received by the licensee are paid to the fund as soon after receipt as practicable. For purposes of cost estimates, the method of decommissioning shall be the method of prompt removal and dismantlement, unless the United States Nuclear Regulatory Commission or its successor requires another method. The commission shall periodically review the estimated cost of decommissioning in accordance with subsection 6 and based upon that review shall revise the schedule of monthly payments as necessary.

When establishing the cost of decommissioning under this subsection, the commission shall obtain from the licensee, for information purposes, a determination of any possible federal income tax liability related to funds collected for decommissioning purposes until a definitive final determination has been made by the Federal Government that no such liability exists. Notwithstanding any other provision of this subchapter, the licensee may collect additional funds to establish a segregated escrow account for payment of potential federal taxes, as approved by the Federal Energy Regulatory Commission. In the event that no final determination has been made by the Federal Government that no income tax liability exists related to funds collected for decommissioning, the licensee shall exercise all reasonable efforts to obtain such a determination. In no event shall the licensee pay any federal income tax liability amount from the decommissioning trust fund.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**5. Plans required for operation.** Decommissioning financing plans are required as follows.

A. No licensee which receives a certificate of public convenience and necessity may commence operation of a nuclear power plant, unless it has a decommissioning financing plan approved by the commission under subsection 3. [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. The commission shall promulgate an interim decommissioning financing plan by July 13, 1982, for any licensee which does not have a decommissioning financing plan approved under subsection 3. Payments shall commence immediately under the interim decommissioning financing plan and be deposited in an escrow account. That escrow account may be invested in investments permitted for the trust fund under section 4355, subsection 3, paragraph B. When a decommissioning plan is approved and a decommissioning trust fund established, the interim plan shall terminate and the money in that escrow account shall be transferred to the fund. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**6. Periodic review of plan.** Decommissioning financing plans for nuclear power plants shall be reviewed as follows.

A. If the commission approves a decommissioning financing plan under subsection 3, the commission shall, at least every 5 years and annually in the 5 years preceding scheduled closing, and annually thereafter until decommissioning is completed, review the financing plan to assess its adequacy. If changed circumstances make a more frequent review desirable or if the licensee requests it, the commission may review the plan after a shorter time interval. The review shall include, but not be limited to, the following considerations:

- (1) The estimated date of closing the plant;
- (2) The estimated cost of decommissioning;
- (3) The reasonableness of the method selected for cost estimate purposes;
- (4) The size and growth rate of the decommissioning trust fund, taking into account the effect of inflation; and
- (5) The adequacy of the plans for financing any shortfall required under subsection 2, paragraph F. [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. After review under paragraph A, the commission may, after public hearing, order such changes in the decommissioning financing plan as it determines necessary to make the plan comply with the criteria in subsection 3, paragraph B. [PL 1987, c. 141, Pt. A, §6 (NEW).]  
[PL 1987, c. 141, Pt. A, §6 (NEW).]

**7. Physical decommissioning plan.** At least 3 years prior to closing a nuclear power plant, the licensee shall submit a physical decommissioning plan to the Governor and the commission, with updates annually thereafter. In the event of premature closing, the plan shall be submitted as soon as possible.

The commission shall review the plan to ascertain its contents and determine under subsection 6 the adequacy of the decommissioning fund to pay for that plan, but the commission may not duplicate the health and safety review conducted by the United States Nuclear Regulatory Commission or its successor. The licensee shall file with the physical decommissioning plan a list of all decommissioning-related permits which it must receive from agencies of the State. The licensee shall update its filing annually to indicate the progress of any permit applications which it has undertaken before agencies of the State. The Public Utilities Commission shall transmit copies of this information to all agencies on the list of permits and shall place this information in a separate file which shall be made available for public inspection. Those agencies shall inform the commission when they issue any licenses or permits or take any other final action. No licensee may decommission a nuclear power plant unless the physical decommissioning plan has been submitted to the commission.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §§A98,99 (AMD). PL 1999, c. 398, §§A104,105 (AFF).

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