CHAPTER 43

NUCLEAR POWER GENERATING FACILITIES

SUBCHAPTER 1

CONSTRUCTION

§4301. Findings and purpose

1. Investment in nuclear power plants. The Legislature finds that construction of a nuclear power plant is a major financial investment, which will have consequences for consumers for years to come.
[PL 2015, c. 165, §1 (AMD).]

2. Costs. The Legislature finds that there are many uncertain future costs associated with nuclear power plants, including the costs of low-level and high-level waste disposal, decommissioning and long-term care. These costs will be borne by the consumers and reductions in these costs will serve to benefit consumers.
[PL 2001, c. 629, §1 (AMD).]

3. Citizen participation. The purpose of this subchapter is to provide for citizen participation in any decision to construct a nuclear power plant within the State.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A94 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 2001, c. 629, §1 (AMD). PL 2015, c. 165, §1 (AMD).

§4302. Referendum

1. Question submitted to voters. Prior to the construction of any nuclear power plant within the State, the question of approving that construction must be submitted to the voters of the State in the manner prescribed by law for holding a statewide election. This question must be submitted to the legal voters of the State at the next following statewide election. The municipal officers and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of construction by voting on the following question:

"Do you approve construction of the nuclear power plant proposed for (insert locations)?"
[PL 1999, c. 398, Pt. A, §95 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

2. Manner of voting and counting ballots. The legal voters of each city, town and plantation shall vote by ballot on this question and shall designate their choice by a cross or check mark placed within a corresponding square below the words "Yes" or "No." The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the return and, if it appears that a majority of the legal voters are in favor of construction, the Governor shall proclaim that fact without delay.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Preparation of ballots. The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this subchapter necessary to carry out the purpose of this referendum.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A95 (AMD). PL 1999, c. 398, §§A104,105 (AFF).

§4303. Notice; effective date of certificate; prohibition

Construction may not commence on a nuclear power plant without approval by the voters, as prescribed in section 4302. [PL 1999, c. 398, Pt. A, §96 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A96 (AMD). PL 1999, c. 398, §§A104,105 (AFF).

SUBCHAPTER 2

EMISSIONS AND SAFETY REPORTING

(REPEALED)

§4331. Purpose

(REPEALED)

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1987, c. 490, §C10 (AMD). PL 2005, c. 254, §A1 (RP).

§4332. Notice of emissions to the Commissioner of Health and Human Services

(REPEALED)

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1991, c. 689, §§1,2 (AMD). PL 2001, c. 614, §1 (AMD). PL 2003, c. 689, §B7 (REV). PL 2005, c. 254, §A1 (RP).

§4333. Reports by the Commissioner of Health and Human Services

(REPEALED)

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 2003, c. 689, §B7 (REV). PL 2005, c. 254, §A1 (RP).

§4334. Safety reporting; penalty

(REPEALED)

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1987, c. 370, §8 (AMD). PL 2005, c. 254, §A1 (RP).

SUBCHAPTER 3

DECOMMISSIONING

§4351. Short title; findings

This subchapter shall be known and may be cited as the "Nuclear Decommissioning Financing Act." [PL 1987, c. 141, Pt. A, §6 (NEW).]

The Legislature has made the following findings. [PL 1987, c. 141, Pt. A, §6 (NEW).]

1. Proper decommissioning is essential. The Legislature finds that timely proper decommissioning of any nuclear power plant beginning at the time of its closing is essential to protect public health, safety and the environment and that the cost of decommissioning will be significant.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

2. Collection of funds to pay for decommissioning costs. To ensure that the customers who received the benefits of these facilities pay for these decommissioning costs, the Legislature finds that it is prudent for the State to require the licensee operating a nuclear power plant in the State to collect sufficient funds during the remaining useful life of the plant to pay for these costs.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Trust fund. The Legislature finds that the best way to ensure that the funds collected will be available when they are needed for decommissioning is to require that the funds be placed in a separate trust fund for each plant and invested by a trustee until they are needed for decommissioning.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

4. Decommissioning fund committee. The Legislature finds that it is in the public interest to have a decommissioning fund committee responsible for the prudent management of the trust fund. That committee may be established by the licensee, with Public Utilities Commission approval, or publicly established, but in either case would be subject to the requirements of this subchapter.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

5. Taxes. The Legislature finds that funds set aside for decommissioning protect the people of the State and thus serve an essential governmental function, that payment of taxes on these funds would be an unreasonable and inappropriate burden on the ratepayers and that the income earned by the fund should be tax exempt and payments made to the fund by the licensee should be tax deductible.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

6. Premature closing of plant. The Legislature finds that assurance is needed that funds will be available for the cost of decommissioning which would occur if a nuclear power plant is prematurely closed.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

§4352. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [PL 1987, c. 141, Pt. A, §6 (NEW).]

1. Closing. "Closing" means the time at which a nuclear power plant ceases to generate electricity and is retired from active service.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

2. Decommissioning. "Decommissioning" means the series of activities undertaken beginning at the time of closing of a nuclear power plant to ensure that the final disposition of the site or any radioactive components or material, but not including spent fuel, associated with the plant is accomplished safely, in compliance with all applicable state and federal laws. Decommissioning includes activities undertaken to prepare a nuclear power plant for final disposition, to monitor and maintain it after closing and to effect final disposition of any radioactive components of the nuclear power plant.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Decommissioning expenses. "Decommissioning expenses" means the following:

A. All reasonable costs and expenses of removing a nuclear power plant from service, including, without limitation, dismantling, mothballing, removing radioactive waste material except spent fuel to temporary or permanent storage sites, decontaminating, restoring and supervising the site, and any costs and expenses incurred in connection with proceedings before governmental regulatory authorities relating to the authorization to decommission the plant; [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. All costs of labor and services, including services of inspectors, supervisors, surveyors, engineers, counsel and accountants, performed in connection with the decommissioning of the plant, and all costs of materials, supplies, machinery, construction equipment and apparatus acquired for or in connection with the decommissioning of the plant. It is understood that any amount, exclusive of proceeds of insurance, realized by a licensee as salvage on or resale of any machinery, construction equipment and apparatus, the cost of which was charged as a decommissioning expense, must be treated as a deduction from the amounts otherwise payable on account of the cost of decommissioning of the plant; and [PL 2021, c. 676, Pt. A, §50 (AMD).]

C. All overhead costs applicable to the plant during its decommissioning period, including, but not limited to, taxes, other than taxes on or in respect of income; licenses; excises and assessments; casualties; surety bond premiums and insurance premiums. [PL 1987, c. 141, Pt. A, §6 (NEW).]

Without limiting the generality of this subsection, amounts expended or to be paid with respect to decommissioning a nuclear power plant shall constitute part of the decommissioning expenses if they are, or when paid will be, either properly chargeable to any account related to decommissioning of a nuclear power plant in accordance with the systems of accounts then applicable to the licensee, or properly chargeable to decommissioning of a nuclear power plant in accordance with then applicable regulations of the United States Nuclear Regulatory Commission, Federal Energy Regulatory Commission or any other regulatory agency having jurisdiction.
[PL 2021, c. 676, Pt. A, §50 (AMD).]

4. Decommissioning financing plan. "Decommissioning financing plan" means the plan approved by the commission under section 4353.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

5. Decommissioning fund committee. "Decommissioning fund committee" means a committee established to have overall responsibility, as described in section 4354, for a decommissioning trust fund.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

6. Decommissioning trust fund or fund. "Decommissioning trust fund" or "fund" means a trust fund set up as prescribed in sections 4353 and 4355 to hold money for the eventual purpose of paying decommissioning expenses.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

7. Escrow account. "Escrow account" means an account established under commission rules to hold funds collected under an interim decommissioning financing plan promulgated under section 4353, subsection 5, until a decommissioning trust fund is established or to hold funds for other temporary purposes under this subchapter.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

8. Licensee. "Licensee" means the holder of the operating permit from the United States Nuclear Regulatory Commission for a nuclear power plant.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

9. Nuclear power plant or plant. "Nuclear power plant" or "plant" means a nuclear fission thermal power plant situated in this State.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

10. Owner. "Owner" means any transmission and distribution utility that owns any portion of a nuclear power plant, whether directly or through ownership of stock in a company that owns any portion of a nuclear power plant or through membership in a holding company that owns any portion of a nuclear power plant or through other means.
[PL 1999, c. 398, Pt. A, §97 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

11. Premature closing. "Premature closing" means the closing of a nuclear power plant before the projected date of decommissioning, as projected in the decommissioning financing plan under section 4353.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

12. Prompt removal and dismantlement. "Prompt removal and dismantlement" means to immediately remove radioactive or radioactively contaminated material down to allowable residual levels which permit release of the property for unrestricted access.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

13. Trustee. "Trustee" means a bank or trust company qualified to act as a fiduciary in this State.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A97 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 2021, c. 676, Pt. A, §50 (AMD).

§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).

§4354. Decommissioning fund committee

1. Establishment of decommissioning fund committee by the licensee. A decommissioning fund committee may be established for a particular nuclear power plant by the licensee operating that plant within one year after July 13, 1982. Upon a finding by the commission that this licensee-established decommissioning fund committee will be able to carry out the responsibilities and duties of subsection 6, that the fund will be managed in accordance with the requirements of section 4355 and that it is in the public interest, the commission may approve establishment of the committee by the licensee. At that time, the Governor may appoint a voting representative on the licensee-established decommissioning fund committee.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

2. Establishment of a public decommissioning fund committee. In the event that the licensee elects not to establish its own decommissioning fund committee, or in the event that the commission fails to approve a decommissioning fund committee proposed by the licensee, or the commission elects to terminate that committee for good cause shown, a public decommissioning fund committee shall be established consisting of 7 members, including:

A. The Treasurer of State, who shall act as chair; [RR 2021, c. 1, Pt. B, §426 (COR).]

B. A member nominated by the municipal officials of any municipality containing a nuclear power plant; [PL 1987, c. 141, Pt. A, §6 (NEW).]

C. Four members nominated by the Governor, including 2 from the financial community and 2 from the general public; and [PL 1987, c. 141, Pt. A, §6 (NEW).]

D. One member designated by the licensee. [PL 1987, c. 141, Pt. A, §6 (NEW).]
[RR 2021, c. 1, Pt. B, §426 (COR).]

3. Terms of public decommissioning fund committee members. Initially, the members appointed by the Governor shall draw lots for terms. There shall be a one-year term, a 2-year term, a 3-year term and a 5-year term. Thereafter, their terms shall be for 5 years. The municipal representative and the licensee's representative shall be named for 5-year terms. In the event of a vacancy, an interim appointment shall be made to fill the unexpired portion of the term. The Treasurer of State shall serve while holding that office. Other members shall serve until their replacements are sworn in.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

4. Compensation. Members of the decommissioning fund committee shall receive compensation and be reimbursed for expenses as determined reasonable by the commission. They shall be paid from the decommissioning trust fund, for which services are rendered or expenses incurred. Members of a licensee-established committee are not entitled to any compensation under this subsection.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

5. Conflict of interest. Except for the licensee's representative and members of a licensee-established decommissioning fund committee, members of the committee shall have no direct or substantial indirect financial interest in any nuclear power plant covered by this subchapter in any company which owns directly or indirectly any portion of a nuclear power plant covered by this subchapter or in any institution involved in managing or handling a decommissioning trust fund.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

6. Responsibilities and duties. Whether established by the licensee or otherwise, a decommissioning fund committee is responsible for the prudent management of the decommissioning

trust fund in order to assure that the principal and income which will have accumulated in the fund at the time of closing the nuclear power plant for which it was established will equal the cost established in the decommissioning financing plan approved by the commission. The specific duties of a decommissioning fund committee are to:

A. Appoint the trustee; [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Approve selection of other financial managers, if any, by the trustee; [PL 1987, c. 141, Pt. A, §6 (NEW).]

C. Establish investment policy; [PL 1987, c. 141, Pt. A, §6 (NEW).]

D. Evaluate investment policy and trustee performance; [PL 1987, c. 141, Pt. A, §6 (NEW).]

E. Establish procedures for expenditures from the fund for decommissioning and administrative expenses; and [PL 1987, c. 141, Pt. A, §6 (NEW).]

F. Perform other duties it finds necessary to carry out its responsibilities. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW).]

7. Report; audit. The decommissioning fund committee shall report annually to the Governor, the Legislature and the commission on its activities and the status of the decommissioning trust fund. It shall also report to the owners of any nuclear power plant in the State on its activities relating to that plant and on the status of the associated fund. The report shall contain a breakdown of all administrative expenses. A decommissioning fund committee shall cause an annual audit to be made of each decommissioning trust fund.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

8. Separate committee for each plant. There shall be a separate decommissioning fund committee for each nuclear power plant covered by this subchapter. Members may serve on more than one decommissioning fund committee.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

9. Modification. In the event and to the extent that it is necessary in order to establish the tax exempt status of payments to or income of the decommissioning trust fund, the decommissioning fund committee shall, subject to the approval of the commission, modify its structure and procedures, including if necessary changing from any licensee-established trust committee established under subsection 1 to a public trust committee established under subsection 2, provided that no such modification may be contrary to the purpose for which the trust was established under this subchapter.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). RR 2021, c. 1, Pt. B, §426 (COR).

§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).

§4356. Responsibility for decommissioning

1. Decommissioning trust fund. In the first instance, the cost of decommissioning shall be paid from the decommissioning trust fund established for the plant being decommissioned.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

2. Licensee responsible. If the assets of the decommissioning trust fund are insufficient to pay for the cost of decommissioning, the licensee shall be responsible for the additional cost.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Insufficient assets. If the assets of the licensee are insufficient to cover the remaining cost of decommissioning after the decommissioning trust fund is exhausted, the owners are jointly and severally liable for the safe and proper decommissioning of that nuclear power plant. If, under this subsection, any in-state owner pays decommissioning expenses in excess of its ownership share in the plant, that owner shall have a cause of action to recover that excess from the other owners. The Department of the Attorney General shall assist in bringing such an action.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

4. State not financially responsible; protective action. The State shall have no financial responsibility for decommissioning. If the Governor finds that, because of inadequate action by the responsible parties in carrying out decommissioning, protective action is reasonably required to protect the public health and safety, the State may undertake that action. In that case, the Department of the Attorney General shall bring action against the fund, the licensee and the owners to recover the cost of that protective action. Expenses incurred by the Department of the Attorney General in bringing that action shall be paid from the decommissioning trust fund.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

5. Additional expense in rates. The commission shall include, as an allowable operating expense, in calculation of authorized rates, additional decommissioning funds actually supplied by an electric utility in the State, to the extent these are just and reasonable.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

§4357. Procedure, liability and penalties incorporated by reference; construction

To the extent that they are not in conflict with this chapter, chapters 13 and 15 apply to this chapter. This subchapter shall be construed liberally in order to achieve the purposes stated in this chapter. [PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

§4358. Cost of review

The licensee shall submit to the commission, with the initial filing or upon a subsequent formal review of a decommissioning financing plan under this subchapter, a filing fee as determined by the commission, but not to exceed $115,000, in order to assist in covering the cost of review by the commission. Within one year after establishment of a decommissioning fund under this subchapter, the licensee may recover the licensing fee from the fund. Money received from the filing fee must be segregated, apportioned and expended by the commission for the purposes stated in this section, with a report to the joint standing committee of the Legislature having jurisdiction over appropriations and

financial affairs. Any unexpended funds from the filing fee must be transferred to the decommissioning trust fund after approval of the plan. [PL 2021, c. 318, §14 (AMD).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 2021, c. 318, §14 (AMD).

§4359. Enforcement

All provisions of this subchapter shall be enforced by the Department of the Attorney General, with the cost of enforcement paid from the decommissioning trust fund. [PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

SUBCHAPTER 4

SPENT FUEL AND HIGH-LEVEL WASTE REQUIREMENTS

§4371. On-site storage of spent fuel assemblies; limitations

After July 1, 1992, no nuclear fission thermal power plant licensee may store or maintain in on-site spent fuel element pools or other on-site temporary storage facilities any spent nuclear fuel which was removed from the nuclear reactor core more than 3 years previously. [PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

§4372. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1987, c. 141, Pt. A, §6 (NEW).]

1. Construction. "Construction" means the installation of permanent equipment or structures. [PL 1987, c. 141, Pt. A, §6 (NEW).]

2. High-level radioactive waste. "High-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste that contains fission products in sufficient concentrations; and other highly radioactive material that the United States Nuclear Regulatory Commission, consistent with existing law, determines by rule to require permanent isolations.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Nuclear power plant. "Nuclear power plant" means a nuclear fission thermal power plant. [PL 1987, c. 141, Pt. A, §6 (NEW).]

4. Technology or means for the disposal of high-level nuclear waste. "Technology or means for the disposal of high-level nuclear waste" means a method for the permanent and terminal disposal of high-level nuclear waste. It does not necessarily require that facilities for the application of such technology and means be available at the time the commission makes its findings. This disposition does not necessarily preclude the possibility of an approved process for retrieval of such waste.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

§4373. Certification required prior to construction of nuclear power plants

No construction may commence on a nuclear power plant, until the Public Utilities Commission has certified it under this subchapter. [PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

§4374. Conditions for certification of nuclear power plants

The commission may certify a nuclear power plant if it finds that: [PL 1987, c. 141, Pt. A, §6 (NEW).]

1. Federal Government identification and approval of technology. The Federal Government, through its authorized agency, has identified and approved a demonstrable technology or means for the disposal of high-level nuclear waste;
[PL 1987, c. 141, Pt. A, §6 (NEW).]

2. Waste storage facilities operational. Specific facilities with adequate capacity to contain high-level nuclear waste are in actual operation, or will be in operation, at the time the nuclear power plant being certified requires the means for the disposal of high-level nuclear waste; and
[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Proposal for disposal is in conformity. The disposal of high-level nuclear waste proposed for any nuclear power plant to be certified according to this subchapter is in full conformity with the technology approved by the authorized agency of the Federal Government.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

§4375. Commission action upon petition

Upon petition of any person, the commission shall within a reasonable time conduct public hearings and make specific findings as to the conditions set forth in section 4374. [PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

§4376. Commission and other agency action if certification not granted

If the conditions of section 4374 have not been met, the commission may continue to receive and process applications for certification, but may not certify a nuclear power plant. Any other governmental entity which grants necessary permits, licenses, approvals or authorizations for construction of a nuclear power plant may process and grant those permits, licenses, approvals or authorizations, subject to the commission's granting of certification under this chapter. [PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

SUBCHAPTER 5

SPENT FUEL DISPOSAL TRUST FUND

(REPEALED)

§4391. Definitions

(REPEALED)

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A101 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 2017, c. 402, Pt. C, §101 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). MRSA T. 35-A §4392, sub-§6 (RP).

§4392. Spent Nuclear Fuel Disposal Trust Fund

(REPEALED)

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 173, §§1-3 (AMD). PL 1999, c. 398, §A102 (AMD). PL 1999, c. 398, §§A104,105 (AFF). RR 2009, c. 2, §104 (COR). PL 2015, c. 494, Pt. C, §2 (AMD). PL 2017, c. 402, Pt. C, §102 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). MRSA T. 35-A §4392, sub-§6 (RP).

§4393. Report; audit

(REPEALED)

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). MRSA T. 35-A §4392, sub-§6 (RP).

SUBCHAPTER 6

POST-DECOMMISSIONING OVERSIGHT FEES

(REPEALED)

§4395. State assessment

(REPEALED)

SECTION HISTORY

PL 2005, c. 254, §A2 (NEW). PL 2007, c. 539, Pt. KK, §14 (RP).

§4396. Interim Spent Fuel Storage Facility Oversight Fund

(REPEALED)

SECTION HISTORY

PL 2005, c. 254, §A2 (NEW). PL 2007, c. 539, Pt. KK, §14 (RP).

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