

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1045

6
7 H.P. 805

House of Representatives, March 4, 1983

8 On Motion of Representative Vose of Eastport, referred to the Committee
9 on Public Utilities. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Michael of Auburn.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Ensure Funding for the Eventual
18 Spent Fuel Disposal at Nuclear Power Plants.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 35 MRSA c. 269, sub-c. IV is enacted to read:

23 SUBCHAPTER IV

24 SPENT FUEL DISPOSAL

25 §3371. Findings

26 The Legislature finds that timely proper disposal
27 of spent fuel at any nuclear power plant is essential
28 to protect public health, safety and the environment
29 at the time of closing that nuclear power plant and
30 that the cost will be significant. To ensure that
31 customers who receive the benefits of such facilities

1 pay for these disposal costs, the Legislature finds
2 that it is prudent for the State to require the
3 licensee operating any nuclear power plant to collect
4 sufficient funds during the remaining useful life of
5 the plant to pay for these costs. The Legislature
6 finds that the best way to ensure that the funds col-
7 lected will be available when they are needed for
8 disposal is to require that the funds be placed in a
9 separate spent fuel disposal trust fund for each
10 plant and invested by a trustee until they are needed
11 for disposal of spent fuel. The Legislature finds
12 that funds set aside for spent fuel disposal protect
13 the people of the State, and thus serve an essential
14 governmental function, that payment of taxes on these
15 funds would be an unreasonable and inappropriate bur-
16 den on the ratepayers and that the income earned by
17 the funds should be tax exempt and payments made to
18 the funds by the licensee should be tax deductible.
19 The Legislature finds that assurance is needed that
20 funds will be available for the cost of spent fuel
21 disposal which would occur if a nuclear power plant
22 is prematurely closed.

23 §3372. Definitions

24 As used in this subchapter, unless the context
25 indicates otherwise, the following terms have the
26 following meanings.

27 1. Closing. "Closing" means the time at which a
28 nuclear power plant ceases to generate electricity
29 and is retired from active service, as determined by
30 the Public Utilities Commission.

31 2. Escrow account. "Escrow account" means an
32 account established under Public Utilities Commission
33 rules to hold funds collected under an interim
34 financing plan promulgated under section 3373, sub-
35 section 5, temporarily until a trust fund is estab-
36 lished.

37 3. Financing plan. "Financing plan" means a
38 plan approved by the commission under section 3373.

39 4. Fund committee. "Fund committee" means a
40 committee established to have overall responsibility,
41 as described in section 3374, for the spent fuel
42 disposal trust funds.

1 5. Licensee. "Licensee" means the holder of the
2 operating permit from the United States Nuclear
3 Regulatory Commission for a nuclear power plant.

4 6. Nuclear power plant or plant. "Nuclear power
5 plant" or "plant" means a nuclear fission thermal
6 power plant.

7 7. Owner. "Owner" means any electrical company
8 which owns any portion of a nuclear power plant,
9 whether directly or indirectly, through ownership of
10 stock in a company which owns any portion of a
11 nuclear power plant, through membership in a holding
12 company which owns any portion of a nuclear power
13 plant or through other means.

14 8. Premature closing. "Premature closing" means
15 the closing of a nuclear power plant before the pro-
16 jected date of spent fuel disposal, as projected in
17 the financing plan under section 3373.

18 9. Prompt removal and dismantlement. "Prompt
19 removal and dismantlement" means to immediately
20 remove radioactive or radioactively contaminated
21 material down to allowable residual levels which
22 permit release of the property for unrestricted ac-
23 cess.

24 10. Spent fuel disposal. "Spent fuel disposal"
25 means the activities undertaken to safely dispose of
26 spent fuel offsite, and in compliance with all appli-
27 cable state and federal laws.

28 11. Trustee. "Trustee" means a fiduciary as de-
29 defined under Title 18-A, section 1-201, which fidu-
30 ciary shall administer the spent fuel disposal trust
31 funds in accordance with Title 18-A, Article VII,
32 subject to sections 3373 and 3375.

33 12. Trust fund or fund. "Trust fund" or "fund"
34 means a trust fund set up as described in section
35 3375 to hold moneys for the eventual purpose of
36 spent fuel disposal.

37 §3373. Spent fuel disposal financing plans; physical
38 disposal plan

1 1. Submission of plans. Spent fuel disposal
2 financing plans shall be submitted as follows:

3 A. Any licensee receiving a certificate of
4 public convenience and necessity under section
5 13-A on or after the effective date of this
6 section for a nuclear power plant shall submit a
7 spent fuel disposal financing plan for the plant
8 to the commission not less than one year prior to
9 beginning commercial operation of the plant.

10 B. Any licensee operating a nuclear power plant
11 on the effective date of this subchapter shall
12 submit a proposed spent fuel disposal financing
13 plan for the plant to the Public Utilities Com-
14 mission as soon as possible, but no later than 60
15 days after the effective date of this subchapter
16 or such later date as the Public Utilities Com-
17 mission may consider appropriate.

18 2. Content of plan. A spent fuel disposal
19 financing plan submitted under subsection 1 shall
20 include:

21 A. An estimate of the time of closing of the
22 nuclear power plant and of the time when spent
23 fuel disposal facilities will be available;

24 B. An estimate of the cost of spent fuel dis-
25 posal, at the time of closing, expressed in
26 dollars current in the year the plan is prepared,
27 if no spent fuel were disposed of before the
28 plant's closing;

29 C. The share of the estimated cost attributed to
30 each electrical company to which the plant sup-
31 plies power;

32 D. Plans for periodic review and updating of the
33 plan, including the cost estimated under para-
34 graph B, consistent with the provisions of sub-
35 section 6;

36 E. Plans for establishing, as soon as possible,
37 a spent fuel disposal trust fund adequate to pay
38 the cost estimated under paragraph B, consistent
39 with subsection 4 and section 3375;

1 F. Plans for insuring against or otherwise
2 financing any shortfall in the fund resulting
3 from a premature closing of the nuclear power
4 plant;

5 G. Assurance of responsibility in the event of
6 insufficient assets, in accordance with section
7 3376; and

8 H. Any other information related to the financ-
9 ing of spent fuel disposal which the commission
10 requests.

11 3. Approval of plans. The procedure for
12 approval of plans is as follows.

13 A. The commission shall conduct a public hearing
14 on the proposed spent fuel disposal financing
15 plan.

16 B. The commission shall approve the spent fuel
17 disposal financing plan if it finds that the
18 licensee, in the judgment of the Public Utilities
19 Commission, provided reasonable assurance that:

20 (1) The estimated time of closing of the
21 nuclear power plant and the estimated cost
22 of spent fuel disposal are reasonable;

23 (2) The share of the estimated cost for
24 each electrical company to which the plant
25 supplies power is reasonable;

26 (3) The principal and income which will
27 have accumulated in the spent fuel disposal
28 trust fund at the time of closing the plant
29 will be adequate to cover the cost of spent
30 fuel disposal;

31 (4) The trustee of the fund will ensure
32 that the funds in the trust are judiciously
33 invested and will adequately protect the
34 funds until spent fuel disposal is com-
35 pleted;

36 (5) The funds in the fund cannot be with-
37 drawn unless approved by the Spent Fuel Dis-

1 posal Fund Committee under section 3375,
2 subsection 5, prior to completion of spent
3 fuel disposal;

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

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

11 (8) The plan reflects full compliance with
12 section 3376; and

13 (9) The plan will periodically be reviewed
14 and revised to reflect more closely the
15 costs and available techniques for spent
16 fuel disposal. This update shall be at
17 least every 5 years.

18 C. If the commission finds that the spent fuel
19 disposal financing plan does not meet the cri-
20 teria under paragraph B, the commission shall
21 reject the plan and order that it be modified as
22 the commission deems necessary to meet those cri-
23 teria.

24 D. The commission shall take final action on the
25 proposed spent fuel disposal financing plan
26 within 180 days after the filing date. The
27 filing date shall be the date when complete
28 information has been filed by the applicant, as
29 determined by the commission. If the commission
30 does not notify the applicant of any deficiencies
31 in the information in the application within 60
32 days of receipt, the application shall be consid-
33 ered complete as of the date of receipt.

34 4. Cost of spent fuel disposal. Based upon the
35 plan, the Public Utilities Commission shall establish
36 the cost of disposing of spent fuel at any nuclear
37 power plant located in the State and shall establish
38 a schedule of monthly payments into the spent fuel
39 disposal trust fund as necessary and convenient to
40 meet that cost at the time of closing. The schedule

1 shall be established so that contributions received
2 by the licensee are paid to the fund as soon after
3 receipt as practicable. The commission shall period-
4 ically review the cost of spent fuel disposal in ac-
5 cordance with subsection 6, and adjust the size of
6 the payments accordingly.

7 5. Plans required for operation and spent fuel
8 disposal. Plans are required for operation and spent
9 fuel disposal as follows.

10 A. No licensee which receives a certificate of
11 public convenience and necessity after the effec-
12 tive date of this section may commence operation
13 of a nuclear power plant unless it has a spent
14 fuel disposal financing plan approved by the com-
15 mission under subsection 3.

16 B. The Public Utilities Commission shall promul-
17 gate an interim spent fuel disposal financing
18 plan one year after the effective date of this
19 section for any licensee plan approved under sub-
20 section 3. Payments shall commence immediately
21 under the interim spent fuel disposal financing
22 plan and be deposited in an escrow account. That
23 escrow account may be invested in investments
24 permitted for the trust fund under section 3375,
25 subsection 3, paragraph B. When a spent fuel
26 disposal plan is approved and a spent fuel dis-
27 posal trust fund established, the interim plan
28 shall terminate and the money in the escrow ac-
29 count shall be transferred to the fund.

30 6. Periodic review of plan. Spent fuel disposal
31 financing plan shall be periodically reviewed as fol-
32 lows.

33 A. If the commission approves a spent fuel dis-
34 posal financing plan under subsection 3, the com-
35 mission shall, at least every 3 years and annu-
36 ally when spent fuel disposal has commenced, or
37 in the 5 years preceding scheduled closing,
38 review the financing plan to assess its adequacy.
39 If changed circumstances make a more frequent
40 review desirable or if the company operating the
41 nuclear power plant requests it, the commission
42 may review the plan after a shorter time inter-

1 val. The review shall include, but not be
2 limited to, the following considerations:

3 (1) The estimated dates of closing the
4 plant and of availability of spent fuel dis-
5 posal facilities;

6 (2) The estimated cost of spent fuel dis-
7 posal;

8 (3) The reasonableness of the method se-
9 lected for cost estimate purposes;

10 (4) The size and growth rate of the spent
11 fuel disposal trust fund, taking into ac-
12 count the effect of inflation; and

13 (5) The adequacy of the assurance against
14 shortfall required under subsection 2, para-
15 graph F.

16 B. After review under paragraph A, the commis-
17 sion may order such changes in the spent fuel
18 disposal financing plan as it deems necessary to
19 make the plan comply with the criteria in subsec-
20 tion 3, paragraph B.

21 7. Physical spent fuel disposal plan. At least
22 3 years prior to closing a nuclear power plant, and
23 at least 6 months prior to disposal of any spent
24 fuel, the licensee shall submit a physical spent fuel
25 disposal plan to the Governor and the commission,
26 with updates annually thereafter.

27 The commission shall review the plan to ascertain its
28 contents and determine under subsection 6, the ade-
29 quacy of the spent fuel disposal fund to pay for that
30 plan, but not to duplicate the health and safety
31 review conducted by the United States Nuclear Regula-
32 tory Commission or its successor. The Public Utili-
33 ties Commission is designated as lead agency for
34 determination that all necessary state permits have
35 been obtained. The commission shall refer the physi-
36 cal spent fuel disposal plan to all interested agen-
37 cies in order to ensure that it complies with all
38 applicable law. Those agencies shall inform the com-
39 mission when they issue any licenses or permits or

1 take any other final action. No licensee may dispose
2 of spent fuel from a nuclear power plant unless the
3 physical spent fuel disposal plan has been submitted
4 to the commission and the commission certifies that
5 all necessary permits and licenses have been
6 received. The one-year limit does not apply to dis-
7 posal of spent fuel after the premature closing of
8 the plant. Then, a spent fuel disposal plan must be
9 submitted as soon as possible, and in no case later
10 than 9 months after the premature closing.

11 §3374. Spent Fuel Disposal Fund Committee

12 1. Establishment. A 7-member Spent Fuel Dis-
13 posal Fund Committee is established, including the
14 Treasurer of State, the Chairman of the Public Utili-
15 ties Commission, a member nominated by the selectmen
16 or other legislative body of any municipality con-
17 taining a nuclear power plant, and 3 members nomi-
18 nated by the Governor, including 2 from the financial
19 community, and one from the general public. Any
20 licensee may name a member of the committee. The
21 Treasurer of State shall act as chairman.

22 2. Terms. Initially, the members appointed by
23 the Governor shall draw lots for terms. There shall
24 be a one-year term, a 3-year term and a 5-year term.
25 Thereafter, their terms shall be for 5 years. The
26 municipal representative and the licensee's repre-
27 sentative shall be named for 5-year terms. In the
28 event of a vacancy, an interim appointment shall be
29 made to fill the unexpired portion of the term. The
30 Treasurer of State and the Chairman of the Public
31 Utilities Commission shall serve while they hold
32 those offices. Other members shall serve until their
33 replacements are sworn in.

34 3. Responsibilities and duties. The Spent Fuel
35 Disposal Fund Committee is responsible for the pru-
36 dent management of the spent fuel disposal trust
37 funds in order to assure that the principal and
38 income which will have accumulated in the funds at
39 the time of closing any nuclear power plant will
40 equal the cost established in the spent fuel dis-
41 posal financing plans approved by the commission.
42 Their specific duties are to appoint the trustee;
43 approve selection of other financial managers, if

1 any, by the trustee; establish investment policy;
2 evaluate investment policy and trustee performance;
3 authorize expenditures from the funds; and such other
4 duties as they find necessary to carry out their
5 responsibility.

6 4. Compensation. Members of the Spent Fuel
7 Disposal Fund Committee shall receive compensation
8 and expenses as deemed reasonable by the Public
9 Utilities Commission. These shall be paid from the
10 spent fuel disposal funds.

11 5. Conflict of interest. Except for the
12 licensee's representative, members shall have no
13 direct or substantial indirect financial interest in
14 any nuclear power plant covered by this subchapter or
15 in any company which owns directly or indirectly any
16 portion of a nuclear power plant covered by this sub-
17 chapter or in any institution involved in managing or
18 handling the spent fuel disposal funds.

19 6. Report; audit. The Spent Fuel Disposal Fund
20 Committee shall report annually to the Governor, the
21 Legislature and the owners of any nuclear power plant
22 located in the State, on their activities and the
23 status of the funds. A summary of the information
24 shall be included in the annual reports of any owners
25 in the State. The report shall contain a breakdown
26 of all administrative expenses. The Spent Fuel Dis-
27 posal Fund Committee shall cause an annual audit to
28 be made of the spent fuel disposal funds.

29 7. Establishment of Spent Fuel Disposal Fund
30 Committee by the licensee. A Spent Fuel Disposal
31 Fund Committee may be established by any licensee
32 operating a nuclear power plant within one year after
33 the effective date of this subchapter. Upon a find-
34 ing by the Public Utilities Commission that this
35 licensee-established Spent Fuel Disposal Fund Com-
36 mittee will be able to carry out the responsibilities
37 and duties of subsection 3, that the funds will be
38 managed in accordance with the requirements of
39 section 3375 and that the change is in the public
40 interest, the commission may order that the existing
41 Spent Fuel Disposal Fund Committee be dissolved and
42 that its duties be assumed by the
43 licensee-established Spent Fuel Disposal Fund Commit-

1 tee. At that time, the Governor shall have the
2 authority to appoint a nonvoting representative on
3 the licensee-established Spent Fuel Disposal Fund
4 Committee.

5 8. Separate committee for each plant. There
6 shall be a separate Spent Fuel Disposal Fund Commit-
7 tee for each nuclear power plant covered by this
8 chapter. Members may serve on more than one Spent
9 Fuel Disposal Fund Committee.

10 §3375. Spent fuel disposal trust funds

11 1. Trustee. The Spent Fuel Disposal Fund Com-
12 mittee shall select a trustee or trustees to manage
13 the money within the funds in order to ensure that it
14 will be available when needed and, insofar as pos-
15 sible consistent with protection of principal, that
16 it may grow to keep pace with inflation or faster.
17 Preference may be given to financial institutions
18 incorporated in the State if consistent with their
19 fiduciary responsibility, but only if they meet the
20 criteria for trustees established by the Spent Fuel
21 Disposal Fund Committee. The committee may, by a
22 majority vote of its entire membership, change
23 trustees at any time. Trustees shall be subject to
24 the same duties and may exercise the same powers as
25 trustees under Title 18-A, Article VII, to the extent
26 they are not inconsistent with this subchapter. The
27 trustees may appoint subsidiary financial managers,
28 subject to approval by the Spent Fuel Disposal Fund
29 Committee.

30 2. Tax Exemption. The following tax exemptions
31 apply to this subchapter.

32 A. Payments to the spent fuel disposal trust
33 funds shall be considered an operating expense to
34 the licensee and shall be tax deductible for
35 state corporate tax purposes. Investment income
36 to the funds shall also be exempt from state
37 taxation.

38 B. It is the intent of this subchapter that pay-
39 ments to the funds are considered an operating
40 expense to the licensee and exempt from federal
41 corporate income tax. It is the intent of the

1 Legislature that investment income to the funds
2 be exempt from federal taxation.

3 3. Restrictions. The following restrictions
4 apply to spent fuel disposal trust funds.

5 A. All funds collected by any licensee for dis-
6 posal of spent fuel shall be immediately segre-
7 gated from the company's assets and transferred
8 to the trustee for placement in the spent fuel
9 disposal trust funds.

10 B. The spent fuel disposal trust funds may only
11 be invested in secure assets with maturity no
12 later than the estimated end of the useful life
13 of the plant as follows:

14 (1) The bonds, notes, certificates of
15 deposit or other obligations issued or
16 guaranteed by the United States or by any
17 agency or instrumentality of the United
18 States;

19 (2) The bonds, notes, certificates of
20 deposit or other obligations issued or
21 guaranteed by any state or by any agency,
22 instrumentality or political subdivision of
23 any state, provided that securities are
24 rated within the 2 highest grades by any
25 rating service approved by the Superinten-
26 dent of Banking; or

27 (3) The bonds and other obligations of any
28 United States' corporation; provided that
29 they are rated within the 2 highest grades
30 by any rating service approved by the Super-
31 intendent of Banking.

32 The funds shall not be invested in the securities
33 of the owner of any nuclear power plant.

34 C. Except as provided in section 3374, subsec-
35 tions 1 and 5, the spent fuel disposal trust
36 funds shall be administered only by persons not
37 normally involved with operations of the licensee
38 or any owner of a nuclear power plant within the
39 State.

1 D. Neither the licensee nor any other owner of
2 any nuclear power plant in the State shall
3 receive any benefit from funds remaining in the
4 spent fuel disposal trust funds after completion
5 of disposal of spent fuel.

6 E. Income to the funds shall be reinvested for
7 the benefit of the funds.

8 4. Contributions to the fund. The spent fuel
9 disposal trust funds shall bill the licensee oper-
10 ating any nuclear power plant in the State and the
11 licensee shall make payments to the trustee of the
12 funds in amounts and on a schedule determined by the
13 Public Utilities Commission in accordance with
14 section 3373, subsection 4.

15 5. Expenditures from the fund; payments for
16 costs of spent fuel disposal. At the time of spent
17 fuel disposal, the Spent Fuel Disposal Fund Commit-
18 tee shall authorize the trustees to make payments as
19 necessary to the licensee to cover actual costs of
20 spent fuel disposal in accordance with the spent
21 fuel disposal plan authorized by the United States
22 Nuclear Regulatory Commission or its successor. The
23 Spent Fuel Disposal Fund Committee may not approve
24 any withdrawal for this purpose prior to completion
25 of disposal of spent fuel, unless the physical
26 spent fuel disposal plan has been reviewed and certi-
27 fied by the Public Utilities Commission under section
28 3373, subsection 7.

29 If spent fuel disposal commences before the time of
30 closing of the plant, the Spent Fuel Disposal Fund
31 Committee may authorize, subject to approval by the
32 Public Utilities Commission, withdrawals as necessary
33 to pay reasonable expenses associated with that with-
34 drawal.

35 The Spent Fuel Disposal Fund Committee may authorize
36 withdrawals as necessary to pay reasonable expenses
37 for administering the funds. No other withdrawal
38 shall be made prior to the commencement of disposal
39 of spent fuel without the approval of the commission
40 and unless the withdrawal is for the purpose of
41 paying reasonable expenses related to disposal of
42 spent fuel.

1 6. Expenditure of money remaining after spent
2 fuel disposal. Upon termination of disposal of
3 spent fuel, the commission shall conduct a final
4 audit of the spent fuel disposal trust funds. The
5 commission may by rule, if the public interest re-
6 quires, establish a spent fuel disposal contingency
7 reserve at that time. If there is money remaining in
8 the funds attributable to a given plant, after its
9 disposal of spent fuel has been completed, the money
10 shall be returned in proportion to its payments to
11 the owners and any other persons who originally made
12 payments to the licensee for spent fuel disposal
13 purposes. No portion of the remaining funds may ac-
14 cruce to the benefit of the licensee.

15 An electrical utility in the State which receives
16 remaining spent fuel disposal funds under this
17 provision shall distribute the funds equitably under
18 the guidance of the commission to its customers.

19 7. Public Utilities Commission review for
20 licensee-established committee. Notwithstanding any
21 other portion of this subchapter, if the Spent Fuel
22 Disposal Fund Committee is established by the company
23 under section 3374, subsection 7, no withdrawals from
24 the funds may be permitted without review and
25 approval by the Public Utilities Commission. No
26 withdrawal may be approved except for the purpose of
27 paying reasonable expenses related to spent fuel
28 disposal.

29 8. Separate fund for each plant. There shall be
30 separate spent fuel disposal trust funds for each
31 nuclear power plant covered by this subchapter. The
32 assets of those funds shall not be commingled in any
33 way.

34 §3376. Responsibility for spent fuel disposal

35 1. Spent fuel disposal trust funds. In the
36 first instance, the cost of spent fuel disposal shall
37 be paid from the spent fuel disposal trust funds.

38 2. Licensee responsible. If the assets of the
39 spent fuel disposal trust funds are insufficient to
40 pay for the cost of spent fuel disposal respec-
41 tively, the licensee shall be responsible for the ad-
42 ditional cost.

