

July 2019

# U.S. Power Industry Update

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## A Message from Mark Fishbaugh



### Welcome to Summer!

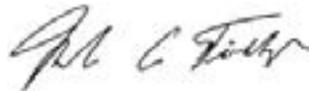
Hard to believe half of 2019 is ending. Certainly, a lot of changes in Power over the past months. Enclosed, please find a copy of our July newsletter with information to help evaluate potential changes in your risk profile. When market uncertainty and challenges exist, additional tools are needed to successfully design and execute the right strategy.

On behalf of the Power team, we wish you all a very safe summer and look forward to seeing everyone in Boston!

*P.S. [Register here](#) for our upcoming Aon Power Event at the AEGIS 2019 Policyholders' Conference in Boston which will be held on Monday, July 15th at the Beehive!*

Best,

**Mark Fishbaugh**



U.S. Power Practice Leader  
Managing Director  
Aon Global Power

## New Hires

**Aon's U.S. Power team is pleased to welcome aboard two new key hires: Garry Edwards and Sean Faulkner.**



**Garry Edwards**

**Garry Edwards** joins our U.S. Power Practice Group as a Senior Vice President for our Power Property Brokerage Group. Garry has over 36 years' experience in the industry and in this role is responsible for managing and overseeing property broking for power and utility clients. He leads strategy discussions, markets programs, and advises clients related to risk management and property insurance

buying decisions. Garry's specialty is designing and placing syndicated programs for complex customers. This involves a deep risk management approach. He also actively manages the insurance placement for power and utility clients.

**Garry sits in our Aon San Francisco office and can be reached via email at: [garry.m.edwards@aon.com](mailto:garry.m.edwards@aon.com)**



**Sean Faulkner**

**Sean Faulkner** joins our U.S. Power Practice Group as a Senior Casualty Placement Specialist. Sean has 14 years in the insurance industry split between underwriting and broking. All those years have been spent working with energy industry clients. In this role, Sean is responsible for negotiating and placing primary and excess casualty coverage for clients in the power and utility sector.

Sean specializes in Gas/Electric Utilities, Independent Power Producers, and Midstream Oil and Gas Operators. Other areas of his expertise include primary casualty coverages, excess workers compensation, and large layered casualty towers.

**Sean sits in our Aon New York City office and can be reached via email at [sean.faulkner@aon.com](mailto:sean.faulkner@aon.com).**

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## 2019 Aon U.S. Power Symposium Recap

Our U.S. Power Practice team recently held its 2nd Annual U.S. Power Symposium on May 15th, 2019 at the New York Yacht Club in New York City. We brought together clients, markets and industry stakeholders to participate in a candid conversation with their peers, colleagues and industry experts on changes, challenges and the latest trends affecting the power industry today and in the future.

Key highlights from this Symposium included presentations from top industry professionals including Orsted, Mandy McNeil International Limited, Calpine Corporation, Berkshire Hathaway, GE Renewable Energy, and FM Global. Topics covered Offshore Wind, New Technologies, Wildfire Risk, The U.S. Investment Environment, Large Power Losses, and the U.S. Power Generation Marketplace.

We had a great turnout, with attendees from across the U.S. The agenda was well received and there were a lot of great discussions throughout the conference.

**We will be planning our 2020 Symposium soon so look out for details!**



Names from L to R: Mark Fishbaugh, Chris Scontras, and Pete Conway



The U.S. Power Summit, May 15th, 2019 at the New York Yacht Club in New York City.

# 2019 Aon Global Risk Management Survey: Top Risks for the Power and Utilities Industry

Mark Fishbaugh, Managing Director and U.S. Power Practice Leader, Aon Global Power



Mark Fishbaugh

Aon's 2019 Global Risk Management Survey, the seventh of its kind since 2007, is designed to offer organizations insights to enable better management of risk related volatility and compete in an increasingly complex business environment. The survey, which was conducted in the last quarter of 2018, drew responses from 2,600 risk managers from 33 industries, including

organizations across 60 countries. Aon conducts this survey every other year to identify key risks, trends and challenges facing organizations and to provide insights that will help risk managers, C-suite executives and other business leaders develop effective strategies to address both traditional and emerging risks.

A subset of the global report shows the aggregated answers to each question of respondents in the power industry compared to overall results. At right are the top 10 risks identified by the power industry participants.

Every client's risk profile is unique. One objective of this report is to see where your company lies within the power industry, in addition to other industries.

With risks becoming increasingly unpredictable to prepare for and mitigate, the power survey showed risk readiness dropping to its lowest level in 12 years. Risk managers today must not only structure adequate insurance for current and emerging risks, they must also leverage data and craft alternative solutions for major issues for which coverage currently doesn't exist or is harder to obtain in the hardening market.

The survey showed that organizations may not be fully leveraging available data and analytics when identifying emerging risk issues, assessing the likelihood and severity of events, and determining insurance limits and deductibles. Globally, only 20 percent of respondents said that they use risk modeling; 21 percent use scenario analysis. If your company fits this polling result, you may be vulnerable to misunderstanding exposures, underestimating volatility, and underinsuring or miscalculating limits.

To mitigate against the major risks of today in a hardening insurance market, organizations are moving toward an enterprise-wide approach to risk management – and working with partners that have the knowledge to respond with new products and services, including alternative solutions, that enable those organizations to address concerns ranging from climate change to cyber exposures.

This is especially important with many of today's top risks expected to grow. Looking ahead to 2022, respondents in the power industry projected that cyber-attacks/data breaches would catapult to be their number two risk concern (from six this year.) They anticipated that regulatory/legislative changes will continue to hold the top risk spot, with business interruption dropping from 2 to 3 in 2022.

As power companies face new and growing risks, Aon's power team stands ready to provide advice and innovative insurance solutions to

## Top 10 Risks for the Power Industry



## Looking Ahead to 2022

- 1 Regulatory/  
Legislative  
Changes
- 2 Cyber Attacks/  
Data Breach
- 3 Business  
Interruption

our clients to help them be prepared and effectively navigate the challenges ahead. You can download the full survey and utility specific survey via the links below. As noted, every client's risk footprint is unique to their risk profile and we welcome any opportunity to utilize our industry knowledge in the interpretation of these results and their specific impact on your risk profile and solutions.

[Download the Full 2019 Aon Risk Management Survey here.](#)

[Download the Power and Utility Industry Specific Aon Risk Management Survey here.](#)

*If you have any questions about your specific coverage or are interested in obtaining coverage, please contact your Aon broker.*

## More Power to Canada

Allison Miller, Senior Vice President and Canada Power Practice Leader,  
Aon Global Power & Jason Stone, Vice President, Aon M&A and  
Transaction Solutions



Allison Miller

It's become common in the past few years to see Canadian companies acquiring regulated U.S. utilities – whether it's Newfoundland's Fortis Inc. acquiring midwestern utility ITC Holdings, or Edmonton-based EPCOR Utilities Inc. acquiring a basket of smaller utility assets in the southwestern U.S.



Jason Stone

**Many are asking what's behind this trend: Why are so many Canadian companies looking south of the border for growth. We point to five key reasons:**

- **Stable, predictable assets.** Regulated utilities generate predictable cash flow, driving earnings on a regular basis. This predictability also makes U.S. utilities attractive to Canada's large pension funds and infrastructure investment pools as they look to deploy capital in ways that match their own long-term investment strategies.
- **More prospects.** There are many more purchase opportunities in the U.S. than in Canada. First, because of the relative size of the two countries. Second, many utilities, especially electric utilities, are part of crown corporations owned by Canada's provincial governments and not for sale.
- **A favored state.** While the U.S. administration has acted to reduce trade with many nations, Canada has enjoyed increasingly favored status, with the government amenable to Canadian neighbors purchasing U.S. domestic assets.

- **Better than building.** For Canadian companies looking for efficient growth, acquiring an existing asset is far more attractive than building one -- especially in the power industry when there are long project lifecycles, infrastructure and regulatory hurdles to consider on both sides of the border.
- **Access to market liquidity and capital.** When Canadian companies acquire U.S. assets, they often take on a dual listing on the Toronto and U.S. stock exchanges, giving them enhanced access to liquidity and capital.

With all the upside, there are of course risks to be managed as well. Listing on the U.S. stock exchanges puts directors and officers at heightened risk of D&O liability and securities litigation. In addition, the U.S. has a markedly more litigious liability environment.

Aon's Power Practice has the global and local industry knowledge and resources to support these acquisitions, from the transactional liabilities onward through operations. As the North American pipeline and electrical transmission grid become increasingly integrated, Aon's Power Team is tightly unified: We work as one unit supporting clients in the U.S. and Canada – and anywhere around the world. We have people on the ground locally who know the local regulatory issues and risks specific to particular jurisdictions and provide a seamless transition of insurance and a partner to help the newly combined entity manage its full spectrum of risks.

**For more information, please contact [Allison Miller](#) or any member of Aon's Canadian power team.**

*If you have any questions about your specific coverage or are interested in obtaining coverage, please contact your Aon broker.*

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## The New Wave of Securities Class Action Litigation

### Mismanagement of Corporate Events Can Create Vulnerability

*Ross Wheeler, Central Region Managing Director, Aon Financial Services Group & Kristin Kraeger, National D&O and Fiduciary Product/Practice Leader, Aon Financial Services Group*



Ross Wheeler



Kristin Kraeger

A new age is dawning on the nature of class action securities litigation. Today, companies and their directors and officers face myriad allegations from an active plaintiffs' bar claiming corporate mismanagement following a negative event in connection with the company's operations. Commonly dubbed "event-driven" litigation, this new rendition of securities litigation results when a press worthy event happens (think, cyber breach, sexual harassment allegation, or products that cause cancer), the "Street" reacts and the company's stock price falls precipitously; finally followed by a lawsuit alleging the company should have disclosed the negative operational event earlier.

A common premise in the "event-driven" litigation involves mismanagement - corporate mismanagement in connection with the company's business operations. Whether the allegations relate to cyber breaches, obtaining FDA approval, a product-liability issue, a hostile corporate culture, an airplane crash, a corporate corruption scandal or a dam collapse; they almost always claim any previous statements the company made relating to the alleged operational problem were misleading for failing to disclose the event. Those statements could be, among other sources, a part of the risk factors the companies describe in their financial statements or statements made by management in public press releases, analyst or investor forums. Any statements are fair game for inclusion in an "event-driven" complaint, particularly statements following the disclosure of the event. Post event statements will be held out by plaintiffs as a presumption of mismanagement – meaning, bad news must equal bad behavior.

Take for example, health and safety incidents now emerging as a basis for event driven litigation. Litigation arising from the California wildfires, air travel and the recent filing resulting from a dam collapse represent yet another fruitful area for event-driven follow on securities cases. In the event of the dam collapse, which resulted in floods and loss of lives, Brazilian authorities froze significant sums of the responsible party's assets to pay for the damages. The complaint alleges that throughout the class period, the responsible company and some of its senior officers made materially false and misleading statements regarding the

company's business and its assessment of the risk and potential damage of a dam breach at company-owned sites, as well as the adequacy of their programs to mitigate health and safety incidents. The scope of the responsible party's misstatements has been amplified by claims in the complaint that the company made public commitments to keep its workplace safe and to minimize environmental damage following a previous dam collapse at a mine in Brazil which was joint-owned by the named responsible party. On news of the dam collapse, the price of the named company's American Depositary Receipts ("ADRs") fell, resulting in shareholder losses in billions of dollars.

Breaches of another kind – cyber – are also fertile ground for the new wave of class action securities claims arising from claims of corporate mismanagement in responses to breaches and privacy violations under the General Data Protection Regulation ("GDPR").

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**In one suit, the class action seeks to recover damages for alleged violations of the federal securities laws claiming that throughout the class period the company made materially false and/or misleading statements and/or failed to disclose that its end users had their personal information exposed.**

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In one suit, the class action seeks to recover damages for alleged violations of the federal securities laws claiming that throughout the class period the company made materially false and/or misleading statements and/or failed to disclose that its end users had their personal information exposed. Further allegations include that the company actively concealed this data breach for several months, violating the company's purported data privacy and security policies. The complaint goes on to allege that the discovery of the wrongdoing could foreseeably subject the company to heightened regulatory scrutiny and that prior public statements were materially false and misleading. Following a major media outlet's article exposing the private data of hundreds of thousands of users, the company's stock fell.

Many of these “event-driven” cases also contain fact patterns where information about alleged concealment of an event was sourced from a third-party’s revelation or external sources prompting shareholder litigation. Like the third-party reporting in a technology firm’s litigation, litigation against a global energy player illustrates yet another example of a third party’s reporting of the internal corporate corruption and the news of a regulatory investigation that resulted in subsequent event-driven litigation. A retired executive was arrested in connection with a black-market money-laundering investigation. The global energy firm never mentioned the investigation explicitly, but rather generically noted in certain financial statements over an extended period that it was merely conducting routine internal investigations into various issues. Subsequently, law enforcement authorities released sworn affidavits in which executives from the firm testified to orchestrating a long-standing kickback and bid-rigging scheme with government officials. The class action litigation quickly followed the announcement in the news. After the firm’s failed attempts to dismiss the case and holding from the court in those motions finding that they misstated financials concealed the illegal kickback scheme that, when revealed, undermined the integrity of the firm. The event-driven litigation ultimately settled last year in the billions.

Regardless of the source (e.g., cyber, product liability, safety concerns, and corporate culture) of the fact patterns, the success of these event-driven class action cases will hinge on shareholders’ attempts to turn corporate mismanagement into securities fraud. Shareholders will likely be challenging the principles of what legal

precedent constitutes as false or misleading statement for purposes of the federal securities law. Additionally, these “event-driven” cases will be challenged with whose “scienter” (intent or knowledge of wrongdoing) can be imputed to the corporation. Shareholders will attempt to argue theories of “collective scienter” to establish that the knowledge of employees who may or may not have been involved in drafting the corporate statements should be sufficient to establish knowledge/scienter on behalf of the corporation.

It remains to be seen what the success rate will be with this new style of class action securities litigation. Regardless and rightfully so, corporations and their directors and officers will undoubtedly look to their Directors’ & Officers’ (“D&O”) policies to back stop the cost of defending the litigation either through a successful dismissal or settlement. It is paramount that today’s vintage of D&O policy has the expansive coverage offering, especially on terms that will be tested by “event-driven” litigation, such as: broad definitions of derivative demands and loss, narrow conduct exclusion and severability provisions, less ridged reporting requirements and flexibility for defense arrangements.

Aon stands prepared to empower our clients with risk advisory and risk shifting solutions to meet today’s evolving securities litigation landscape and the future of director and officers’ liability exposures.

**For more information, please contact [Ross Wheeler](#) or [Kristin Kraeger](#).**

*If you have any questions about your specific coverage or are interested in obtaining coverage, please contact your Aon broker.*

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## Explosion at Energy Storage Facility Raises Performance Questions

Daren Gretz, Senior Vice President, Aon Global Power & David Reisinger, Senior Vice President, Property Placement, Aon Global Power



Daren Gretz

### Energy Storage Systems (ESS)

The explosion at the Arizona Public Service (APS) McMicken energy storage plant on April 19th of this year raises questions about the performance of Energy Storage Systems (ESS). Several Arizona firefighters were seriously injured from an explosion at the APS facility with chemical and chemical-inhalation burns. The root cause is still under investigation.



David Reisinger

This is not the only major ESS incident in recent years, including losses in 2017 Engie Electrabel 6MW ESS in Belgium, 2016 S&C Electric ESS in Franklin, Wisconsin and 2012 Kahuku 15MW ESS in Hawaii. The Kahuku root cause points to faulty capacitors, compounded by a secondary fire that spread

as fire fighters were prevented from entering the building during the risk assessment of the batteries emitting toxic fumes.

### How they work

Electro chemical batteries, such as lithium-ion batteries, are chemical energy storage units that store and release electrical energy through an electrochemical reaction. In case of lithium-ion, the battery uses lithium, which is a soft silver-white light alkali metal. Ions, the atom with a net electric charge, travel through an electrolyte between two electrodes, a cathode and an anode. The electrolyte is usually a combustible liquid.

When the battery is charging the positive electrode gives up some of its lithium ions, which move through the electrolyte to the negative electrode and remain there. The battery absorbs and stores energy during this process. When the battery is discharging, the lithium ions move back across the electrolyte to the positive electrode, producing energy. In each case, electrons flow in the opposite direction to the ions around the outer circuit. Electrons do not flow through the electrolyte which is an insulating barrier.

### Risks

Perils of mechanical breakdown, electrical injury defects from manufacturing and installation are leading sources of fire and

explosions for ESS. Lithium ion battery fires may originate from an adjacent fire, mechanical damage or through a thermal runaway in the battery itself. Contributing factors can include extreme weather, faulty design, faulty workmanship, faulty materials, defective integration or faulty maintenance. Since the batteries contain a flammable electrolyte, fires and/or explosions can occur if damaged or incorrectly charged, further amplifying the risk due to the contributing factors.

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Mitigating these risks is an evolving process for the trade associations and code making bodies to implement and consider safety standards including UL Standards, International Electrotechnical Commission standards, DOE Strategic Plan for Energy Storage Safety and NFPA 855 Installation of Stationary Energy Storage Systems (which was recently adopted but does not cover ESS installations under the exclusive control of an electric utility where such installations are installed in accordance with the National Electrical Safety Code-ANSI-C2).

With standards at various stages of issuance, implementation, or development, some states are taking it upon themselves to help their local governments develop effective standards around ESS installations. For example the New York State Energy Research and Development Authority has developed the New York Battery Energy Storage System Guidebook for Local Governments to assist communities to adopt legislation/regulations involving the BESS.

Technology selection can mitigate risk, such as alternative chemistries, and configurations may have less propensity for thermal runaway or fire events such as lithium iron phosphate, lithium manganese oxide, lithium nickel manganese cobalt oxide and flow batteries.

As battery storage applications in the power generation industry are gaining traction with ever increasing implementation, FM has developed Data Sheet 5-33 related to ESS while other insurance carriers are developing their best practices and risk mitigation strategies.

### **Risk Transfer**

Implementing a risk transfer solution for ESS can help leverage traditional all-risk and alternative risk solutions, in conjunction with sound loss control and mitigation efforts. A traditional all risk approach during construction and operation for direct physical damage and business interruption should include coverage extension for comprehensive mechanical breakdown, LEG 2 or better, ordinance or law, debris removal and pollution cleanup to name just a few.

Alternative risk solutions should be considered as part of your risk transfer model, such as 10 to 15-year policies for ESS Performance Cover or ESS Investment Project Cover. The value proposition for these coverages include facilitating efficient financing and promoting commercialization of new and emerging technologies in the ESS industry.

These customizable solutions transfer risks associated with technology, insolvency, warranty default and energy capacity by indemnifying the insured and designated energy storage projects for equipment replacement and/or shortfall of the expected energy capacity.

**For more questions, please contact [Daren Gretz](#) or [David Reisinger](#).**

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# Nuclear Plant Closures

Thomas Magnuson, Broker - Nuclear Risk, Aon Global Power



Thomas Magnuson

After 47 years of generating electricity, the Pilgrim nuclear power plant in Plymouth, MA shut down on May 31st. This is the 8th plant closure since 2013 and will be shortly followed by the closure of Three Mile Island Unit 1 which is set to close on September 30th. These two closures will leave only 96 operating reactors in the US.

Ceasing operations at nuclear plants before the end of their operating licenses has become an option that operators are frequently considering. This is largely due to the increased market pressures from low natural gas prices and declining renewable costs. Additionally, as the makeup of generation increases for renewable energy there is a subsequent increase price volatility that hurts base load power plants.

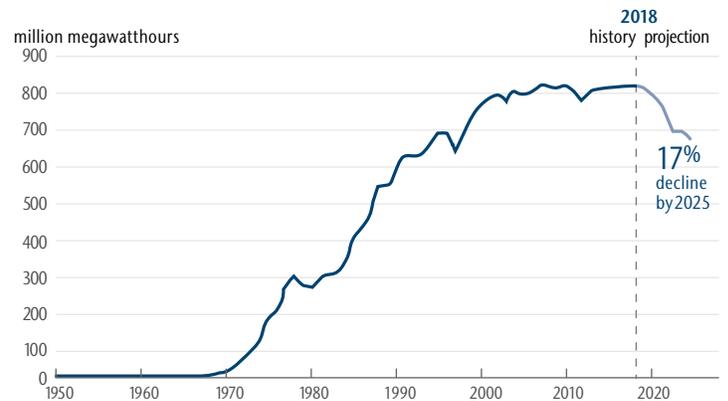
Despite recent plant closures, US nuclear generation peaked in 2018 due to improved efficiencies that resulted in record capacity factors for the industry. However, efficiencies alone will not be able to make up generation losses from the current and future plant closures, so the nuclear industry will likely see a steep decline in its share of electricity market generation.

As operators evaluate the viability of their existing fleet of nuclear assets, they will need to understand the unique risks that they may face with a decision to shut down a nuclear plant. These risks can generally be categorized as shutdown risks and decommissioning risks.

## Shut Down Risks

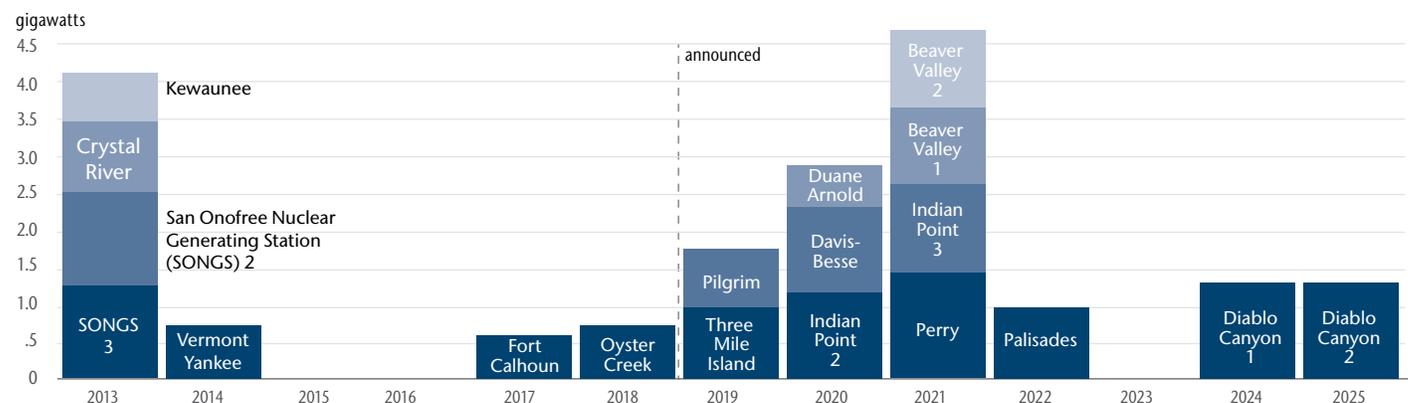
Nuclear power plants are large baseload generators that provide carbon-free reliable energy, employ a large number of workers, and contribute significantly to tax revenue. A decision to cease operations carries a variety of risks that could affect both the utility and the public.

## U.S. Nuclear Electricity Generation, AEO2019 Reference Case (1957-2025)



- Reputational Risk** - A nuclear plant is usually one of the largest sources of employment and tax revenue for a community. Shutting a plant down can drastically change an entire area. This is no more evident than in the town of Vernon where Vermont Yankee is situated. While operating, the nuclear plant provided over half of the town’s annual property tax revenue and its closure has forced many budget cuts despite Entergy providing additional funds to help offset negative effects. Any mishandling of the transition from operational to permanently shut down can lead to severe impacts on a community and unwanted negative publicity for the utility.
- Emission goal risks** - Generally, nuclear plant shutdowns come with an increase in carbon emissions as most of the lost power generation is replaced by fossil fuels. With more utilities setting carbon emission reduction goals, eliminating a large source of low-carbon generation could slow or counteract their progress. How this fits into investors’ strategy and whether that increase in carbon emissions has a financial impact needs to be carefully considered.

## Electricity Generation Capacities of Retired and Retiring Plants (2013-2025)



- **Financial Risks** - Nuclear historically has one of the lowest generation costs and has a functional life of 80 years in some cases. When utilities look to prematurely close nuclear plants due to short-term economic difficulties, they are risking losing potential long-term revenue if market conditions change. Closing a plant is a difficult decision to make as changes to regulations, fuel costs, or even market incentives could all tip the scale to make nuclear much more economically competitive.

### Decommissioning Risks

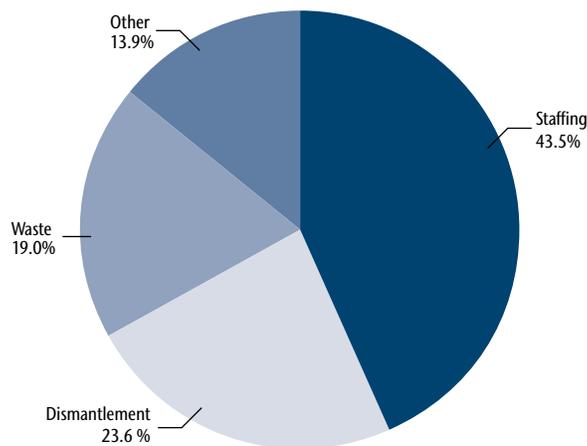
The nuclear industry is relatively unique in that it is required to put money away for future decommissioning. However, determining the appropriate amount needed to decommission a site is subject to much debate. Of the 111 nuclear plants that have been permanently shut down globally, only 13 have been completely decommissioned and only 38 are in the process of being decommissioned. Limited experience is one of the biggest hindrances in determining accurate costs, so appropriate risk evaluation and mitigation is crucial for success.

- **Cost overrun risk** - One option utilities have is to put a plant into SAFSTOR allowing them to defer decommissioning for up to 60 years. This is done in the hopes that the decommissioning trust will grow over that time and that decommissioning techniques will improve and lower the costs. However, choosing this option leaves the utility liable for the plant which is subject to regulatory changes or other unanticipated costs. Additionally, there is the possibility that costs outpace fund increases and the utility could be liable for more than what was budgeted.

An alternative option is to decommission the plant immediately. This was historically accomplished by utilities providing management oversight and hiring a contractor to perform the decommissioning work. The results were higher than expected management costs, delays and cost overruns. Recently, utilities have been working with decommissioning contractors such as EnergySolutions, NorthStar, and Holtec to provide a turnkey solution, thus transferring the liability risks to the contractor. This approach has had its own challenges starting with difficulties in determining adequacy of funds. In some cases, license transfers have been delayed due to funding uncertainties, and utilities have been required to provide additional capital to continue. Even with the scrutiny of decommissioning funds, the licensee (and potentially the utility) remain exposed to cost overruns. Alternative risk transfer options, such as insurance, may be desired to help in the license transfer process and to minimize cost overrun effects.

- **De-construction risks** - Just like any large construction project, decommissioning is a large-scale coordination of contractors and sub-contractors working on a single site where delays can be expensive. Staffing was shown to be the largest cost for decommissioning projects in a study conducted by the Electric

### Nuclear Decommissioning Costs by Category (indicative)



Data source: Electric Power Research Institute's 'Decommissioning Experiences and Lessons Learned' report. (2011).

Power Research Institute, so it is important to allow the various contractors to complete their work as efficiently as possible. While regulatory delays and safety issues remain the largest risk, a coordinated insurance program can assist in more efficient claims processes in the case of an accident. Wrap-up programs could be an efficient tool for this type of large project and should be considered when determining the insurance structure.

- **Legacy risks** - Nuclear sites continue to have potential risks after plant closure and even after the site is fully decommissioned, whether it be from unknown sources of contamination or frivolous claims of third party damages. It is important to carefully review indemnification agreements and to be cautious of land use once the site is decommissioned to minimize those exposures.

Nuclear plants continue to close as they age and as market forces make them less economical. According to the International Atomic Energy Agency (IAEA), as many as 10 or more plants may be permanently shut down globally per year in each of the next 10 years, creating a potential \$160 billion decommissioning industry. While this may make plant closures attractive, it is important for utilities and contractors to fully understand the unique risks involved with the decision to shut down and decommission a nuclear plant.

**For more information, please contact [Thomas Magnuson](#).**

*If you have any questions about your specific coverage or are interested in obtaining coverage, please contact your Aon broker.*

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## About Aon

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