



Background

United States Nuclear Regulatory Commission
Office of Public Affairs
Washington DC 20555
Telephone: 301/415-8200 E-mail: opa@nrc.gov

Effects Of Electric Utility Market Deregulation

Background

The electric industry's move away from traditional rate-based regulation towards increased competition in a deregulated marketplace could have adverse impacts on the long-term ability of some utilities to adequately finance safe operation and decommissioning of their nuclear power plants. Traditionally, the electric utility industry has functioned as a regulated monopoly, providing essential electrical services under an exclusive franchise in exchange for having rates closely regulated by State Public Utility Commissions (PUCs) and the Federal Energy Regulatory Commission (FERC). This relationship began to change as PUCs and FERC initiated actions leading to the deregulation of the electric utility industry, as allowed under the Public Utility Regulatory Policies Act of 1978 and the Energy Policy Act of 1992.

Although the Nuclear Regulatory Commission (NRC) is not normally involved in economic or rate regulation, the agency recognizes the need for adequate financing to support safe operations. The NRC must ensure that economic pressures do not result in reduced safety margins at operating nuclear plants and do not impair a licensee's ability to fully finance decommissioning of a nuclear plant after it is permanently shut down.

Discussion

The NRC needs to ensure that licensees are able to provide adequate assurance of decommissioning funding for their nuclear plants, whether a plant is operated to the end of its licensed term or is shut down prematurely. Primarily due to the established economic regulatory process, the NRC has exercised limited financial oversight of electric utility licensees. For example, the NRC allows traditional rate-regulated electric utility licensees, unlike most other licensees, to accumulate funds for decommissioning over the terms of their operating licenses without providing additional assurance for any unfunded balance. However, with the advent of deregulation, the NRC's assumptions regarding assurance of access to funds for safe operation and decommissioning have been re-evaluated.

In fall 1995, the NRC initiated a re-evaluation of NRC policy regarding financial qualifications for operation and funding assurance for decommissioning among other deregulation-related issues. A comprehensive action plan was developed for this re-evaluation. As part of the plan, NRC issued, in April 1996, an advance notice of proposed rulemaking that sought additional information on electric utility restructuring and comments on additional measures to ensure adequate decommissioning funding.

In September 1997, NRC issued a proposed rule on decommissioning funding assurance. The NRC issued a final rule on decommissioning funding assurance in light of electric utility rate deregulation on September 22, 1998. Among other things, this rule required nuclear power plant licensees to report to the NRC the status of their decommissioning funds by March 31, 1999, and at least once every two years thereafter. Also, within five years of the end of a plant's operation, licensees are required to report this status annually.

The NRC issued a final policy statement in August 1997 that includes: (1) a discussion of safety concerns with respect to electric utility deregulation; (2) a discussion of the current regulatory framework with respect to the conduct of financial qualifications, antitrust, and decommissioning funding assurance reviews for the mergers, holding companies, and other restructuring actions seen so far; and (3) a discussion of the planned approach to future reviews as rate deregulation accelerates.

In the final policy statement, the NRC also addressed its responsibilities vis-a-vis State and Federal rate regulators and the NRC view of the responsibilities of co-owners of nuclear plants. The NRC recognizes the role of PUCs and FERC in rate matters, but also recognizes its own statutory mandate to protect public health and safety. The NRC has pursued increased contacts with the PUCs through the National Association of Regulatory Utility Commissioners, with FERC, and with the Securities and Exchange Commission (SEC) to enhance cooperation in areas in which interests and responsibilities overlap.

Because of the complexity of new business arrangements that have been proposed or completed, and because of NRC concern about a licensee's plan to sell or transfer its assets in relation to rate deregulation, the NRC has taken a more proactive role in ensuring that licensees meet their obligation to report new ownership arrangements. This is part of the NRC requirement that licensees inform the NRC in a timely manner of any planned changes to ownership or control of licensed facilities that could affect safety or NRC safety oversight, and whether significant changes in the organizational and/or financial support for each plant are contemplated.

Where appropriate, the NRC will seek additional information to determine whether the rates of licensees remain regulated. Alternatively, the NRC requires that licensees that no longer are rate-regulated entities provide additional assurance that decommissioning funds will be available when needed and must meet additional financial qualification standards.

In order to be flexible to accommodate licensees' legitimate needs for economic efficiency, NRC has completed several actions to streamline the hearing process for license transfers and to address other considerations in license transfers, such as foreign ownership and technical qualifications. Thus, the NRC issued a final rule to streamline the hearing process in license transfers on December 3, 1998. The NRC also revised its final Standard Review Plan (SRP) on antitrust reviews, issued a final SRP on financial qualifications and decommissioning funding assurance in March 1999 (NUREG-1577, Rev. 1), and issued a final SRP on foreign ownership and control considerations on September 28, 1999. The NRC issued an integrated Standard Review Plan on license transfer issues in April 2000.

November 2004