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NRC ISSUES FINAL POLICY STATEMENT
ON ECONOMIC DEREGULATION OF NUCLEAR POWER PLANTS

The Nuclear Regulatory Commission has issued a final policy statement on its expectations and intended approach to nuclear power plant licensees as the electric utility industry moves from an environment of rate regulation toward greater competition.

The policy statement addresses NRC's concerns about the adequacy of decommissioning funds and about the potential impact of economic deregulation and various industry restructuring actions on the operational safety of reactors.

The statement indicates that the NRC believes that its current regulatory framework is generally sufficient to address the expected changes, but in order to remove any ambiguities in its regulations and address situations that may not be adequately covered, the Commission is considering revising its financial and decommissioning funding assurance requirements.

The agency published an advance notice of proposed rulemaking in the Federal Register on April 8, 1996, to examine issues related to decommissioning funding, and is developing a proposed rule in response to comments received.

Increasing competition may force some utilities to separate their systems into functional areas, causing some licensees to cease being an "electric utility," as defined in NRC regulations. If this occurs, NRC will require the licensees to meet the more stringent decommissioning funding assurance requirements that apply to non-electric utilities. Electric utilities are permitted to accumulate funds for decommissioning over the remaining terms of their operating licenses. NRC regulations require most other licensees to provide funding assurance for the full estimated cost of decommissioning, either through full up-front funding or by some allowable guarantee or surety mechanism.

In addition, the policy statement emphasizes that the NRC retains the right to assess the timing of decommissioning trust fund deposits and withdrawals and the liquidity of decommissioning funds for licensees that no longer are subject to

rate regulatory oversight.

If nuclear power plants no longer meet NRC's definition of an electric utility, NRC will require them to submit proof that they remain financially qualified to operate their plants. The agency is evaluating the need to develop additional requirements to ensure against potential dilution of the capability for safe operation and decommissioning that could arise from rate deregulation and restructuring.

The Atomic Energy Act and NRC regulations provide that no license may be transferred, directly or indirectly, without Commission consent. Consent is clearly required when a corporate entity seeks to transfer a license it holds to a different corporate entity. The NRC staff has advised licensees that agency consent must also be sought for the formation of a new holding company over an existing licensee. The NRC is evaluating what other types of transfers or restructuring should be subject to review. The NRC staff will inform the Commission of any unique or unusual licensee restructuring actions.

The NRC policy statement notes that many NRC licensees own their nuclear power plants jointly with other, unrelated organizations. NRC is concerned about the division of responsibility for operating and decommissioning funds, if co-owners file for bankruptcy or otherwise encounter financial difficulties. The agency recognizes that co-owners generally divide costs and output from their facilities by contract, using a pro rata share standard. However, in highly unusual situations — where adequate protection of public health and safety would be compromised if such action were not taken — the NRC reserves the right to consider imposing joint and several liability on co-owners of more than minor shares when one or more co-owners have defaulted.

The NRC recognizes the primary role that state public utility commissions and the Federal Energy Regulatory Commission have served, and in many cases will continue to serve, in setting rates that include appropriate levels of funding for safe operation and decommissioning. The agency intends to continue to coordinate activities and exchange information with state and federal agencies.

In the area of antitrust reviews, the NRC will explore, with the Federal Energy Commission, Securities and Exchange Commission and Department of Justice, methods for minimizing duplication of effort. The agency will consider seeking legislation eliminating its review requirements to the extent that its reviews are duplicated by other agencies. The NRC anticipates that antitrust reviews over the next 5 to 10 years will arise primarily from changes in control of licensed facilities.

The policy statement is expected to be published in the Federal Register shortly. A draft version was published on September 23. Changes made as a result of comments received are described in the forthcoming notice.

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