

2000 Editorial Services Request

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Proposed rule on decommissioning trust provisions

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FOR: The Commissioners
FROM: William D. Travers
Executive Director for Operations

SUBJECT: PROPOSED RULE ON DECOMMISSIONING TRUST PROVISIONS

PURPOSE:

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To state* }

To request Commission approval to publish in the Federal Register a proposed rule on decommissioning ^{funding} ~~cost~~ requirements. ✓

BACKGROUND:

The staff presented a rulemaking plan (SEC-00-0002) to the Commission on ^{The plan} December 30, 1999, ~~that~~ discussed two actions relating to amending nuclear power reactor decommissioning trust provisions. Subsequently, in a February 9, 2000, staff requirements memorandum (SRM) to the Executive Director for Operations (Attachment 1), the Commission ^{authorized} ~~approved~~ the staff ^{to} ~~proceeding~~ with the rulemaking plan, i.e., ~~to provide the proposed rule and regulatory guide to the Commission.~~ Further, the Commission ^{instructed} ~~directed~~ the staff that "Any specific trust fund terms and conditions necessary to protect the funds fully should be set out in the rule itself, not in the regulatory guide. Sample language for trust agreements consistent with the terms and conditions within the rule may be provided within the associated regulatory guide." ✓

italic.)

The attached Federal Register notice (FRN) ^d ~~is~~ ₁ ² in response to the SRM. ✓

DISCUSSION:

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The goal ^{of} ~~for~~ this rulemaking is to establish broad ~~and~~ performance-based objectives ✓
and criteria for decommissioning trust funds applicable to all power reactor licensees, ✓
^{to} not only ~~those~~ licensees that are transferring their licenses or have undergone or are ✓
undergoing rate deregulation. The objectives and criteria will help ensure that all
licensees understand what trust provisions are acceptable to the NRC. NRC will not
formally review and approve trust agreements, but ^{must} ~~will~~ be informed of material changes ✓
to trust agreements in biennial decommissioning fund status reports. The oversight
process is expected to become more predictable ^{and} ~~consistent~~, ~~and objective~~ because the ✓
objectives and criteria for decommissioning trust funds will be codified. Similarly, the
effectiveness and efficiency of NRC oversight will be enhanced because NRC will be
able to reduce the burdens of addressing provisions of decommissioning trusts on a
case-by-case basis. Licensees will be able to use a standard approach in developing
their decommissioning trust agreements.

The staff believes that decommissioning trust language can be enhanced to increase
assurance of the protection of public health and safety by requiring that the trusts: (1) ✓
^{take} ~~ensure that~~ special care ~~is taken~~ to safeguard the trust corpus from investment risks, ✓
(2) provide adequate information ^{about} ~~concerning~~ the trust to the NRC, (3) and provide ✓
safeguards against improper payments from the trust. Further, the staff believes that
assurance can be enhanced by specifying essential terms and conditions of the
decommissioning trusts.

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Draft Guide?

Concurrent with the issuance of the proposed rule, the staff will issue for comment (DG) ✓

1106, "Proposed Revision 1 of Regulatory Guide 1.159, Assuring the Availability of Funds for Decommissioning Nuclear Reactors."

will be incorporated in

The proposed new section of 10 CFR 50.75 incorporates the criteria that have been required as a condition of license transfer in connection with the sale of nuclear power reactors into the regulatory terms and conditions for reactor decommissioning trust funds. These criteria address the following topics: ✓

use bullets to bring out to main

- The trust must be an external trust fund held in the United States, established pursuant to a written agreement and with an entity that is a State or Federal government agency or whose operations are regulated by a State or Federal agency. ✓
- The trust agreement must provide that trust investments are prohibited in securities or other obligation of the reactor owner or its affiliates, successors, or assigns. ✓
- The trust agreement must provide that investments are prohibited in any entity owning one or more nuclear power plants, except for investments tied to general market indices or non-nuclear sector mutual funds. ✓

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- The trust agreement must ^{stipulate} provide that the agreement cannot be amended in any material respect without 30-days prior written notification^s to the NRC. ✓
- The trust agreement must ^{stipulate} provide that the trustee, investment advisor, or anyone else directing investments made by the trust should adhere to a “prudent investor” standard. ✓

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The trust agreement must provide that no disbursements or payments for the trust may be made by the trustee until the trustee has ^{first} given the NRC 30-days prior written notice, and that no disbursements or payments from the trust may be made if the trustee receives prior written notice of objection from the NRC (other than payment of routine administrative expenses).

- The person directing the investment of the funds ^{cannot} ~~is prohibited from~~ engaging ^e the licensee or its affiliates or subsidiaries as ^{the} investment manager for the funds or ~~from~~ ^{accepting} day-to-day management direction of the funds' investments or direction on individual investments by the funds from the licensee or its affiliates or subsidiaries.

~~With respect to the~~ ^{to} ~~proposed~~ [?] ~~revisions~~ the Regulatory Guide 1.159, Rev. 1 (Task DG-1003), ^{the} the staff prepared the following revisions, among others:

- Incorporates ^d material from NUREG ^P / ⁻ SR1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualification and Decommissioning Financial Assurance" ^{to} that provides ~~the~~ ^{to} criteria for determining the meaning of ~~the terms~~ ^{to} "acceptable to NRC," "under the administrative control of the licensee," and other terms ^{used in the} ✓

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and
consider
app

~~pertinent regulations~~ that are currently not defined in the ~~Regulatory~~ Guide. ✓

- Develop^{ed} a list of trust provisions, based on the model trust language contained in Regulatory Guide 1.159 that identifies key provisions in the ~~model language~~ that currently are not described in the text of the ~~Regulatory Guide~~. The NRC has also provided ~~explanations~~^{ed} of these provisions. ✓
revised

- Provides ~~explanations~~^{ed} or definitions of other terms and conditions such as "subsidiaries," "affiliates," "successors," "assigns," ^{and} similar terms. In addition, an ~~explanation~~^{ed} is provided of the types of investments tied to market indices or non-nuclear mutual funds ~~that will be acceptable~~. ✓
acceptable

- Provides ~~explanation~~^{ed} of what is likely to constitute a "material" change or amendment to the trust instrument. ✓

- Provides ~~explanations~~^{ed} of certain concepts that are currently ambiguous. ✓
For example, the current ~~Regulatory Guide~~ suggests that licensees "should" ensure that trust funds meet certain requirements, such as effectiveness, under ~~pertinent~~ State trust law. This ~~may be~~^e confusing to licensees, who believe that trusts must be legally effective. ✓
revised

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Explains^{ed} the intent and effect of cross^{ed} references to other sources of authority, such as Internal Revenue Service, FERC and State ^{the} requirements. In some cases, the current Regulatory Guide suggests that ^{laws?} trust funds that meet the requirements of these other sources of authority will be acceptable to NRC. The

✓
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revised guidance explains that compliance with these other sources of authority will be acceptable ~~within the scope of the topic that they address~~ st ✓
(e.g., investment criteria or amount of annual payment into the trust fund), but are not measures of the overall acceptability of the trust instrument to NRC. In some cases, compliance with these requirements will not be sufficient, by itself, to constitute acceptability to the NRC. ✓

^{gave}
• Provides a clear and consistent description of the investment guidelines ^{for} ~~pertinent to~~ decommissioning trust funds. Current references in the

Regulatory Guide to State law, ^{FERC} requirements, and other standards ✓

^{are} appear to create some ^{what} ambiguity ^{ous} concerning the precise limits of the ~~investment guidelines and what they include.~~ ✓

COORDINATION:

The Offices of Nuclear Reactor Regulation, Nuclear Regulatory Research, Enforcement, Administration, Nuclear Materials Safety and Safeguards, and Information Resources Management have concurred in the issuance of this proposed rulemaking, The Office of the General Counsel has no legal objection to this paper.

RECOMMENDATION:

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That the Commission:

1. Approve the notice of proposed rulemaking for publication (Attachment 2).
2. Certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act, 5 U. S. C. 605(b).3. ✓

Note:

- italic*
1. The rulemaking ^{will} ~~would~~ be published in the Federal Register ^{with} for a 75-day public comment period. ✓
 2. A draft regulatory analysis will be available in the Public Document Room (Attachment 3). ✓
 3. A draft of Regulatory Guide 1.159, Rev. 1, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors" will be available for public comment (Attachment 4). ✓
 4. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding

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economic impact on small entities and the ⁶²⁸¹⁵ reasons for it as ₅ ✓
required by the Regulatory Flexibility Act.

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5. Copies of the Federal Register notice of proposed rulemaking will ✓
be distributed to all affected Commission licensees. The notice will
be sent to other interested parties upon request.
 6. A public announcement will be issued (Attachment 5) ✓
 7. The appropriate Congressional committees will be informed, and ✓
 8. This proposed rule amends information collection requirements that
are subject to the Paperwork Reduction Act of 1995 (44 U.S.C.
3501 et seq.). This rule is being sent to the Office of Management
and Budget for review and approval of the paperwork requirements.

William D. Travers
Executive Director
for Operations

Attachments: As stated (5)

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