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Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

August 13, 2001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Ms. Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001

Dear Ms. Vietti-Cook:

TVA COMMENTS ON NRC'S PROPOSED RULE ON DECOMMISSIONING TRUST PROVISIONS AND DRAFT REGULATORY GUIDE DG-1106

These comments are submitted by TVA in response to NRC's request for public comments on its proposed rule regarding Decommissioning Trust Provisions (66 FR 29244, May 30, 2001). TVA also endorses the comments provided by the Nuclear Energy Institute (NEI) and Winston & Strawn, on behalf of the Utility Decommissioning Group.

TVA shares the Commission's interest in ensuring that adequate funds are set aside and properly maintained to ensure the availability of funds for the decommissioning of nuclear power reactors. NRC's proposed approach in adopting standard rules regarding decommissioning trust funds is superior to NRC's practice over the last several years of applying specific license conditions on a case-by-case basis.

TVA is concerned, however, that the proposed rule does not contain any plans for transition from existing trust provisions to the requirements of the proposed rule. TVA encourages NRC to allow licensees sufficient time to review and conform trust documents as necessary to comply with the rule as it appears in final form.

TVA firmly believes that NRC should not establish its own investment standard, but should rather adopt the "prudent investor" standard already promulgated by the Federal Energy Regulatory Commission because that standard is both fully adequate and well understood. In particular, NRC should modify the proposed rule at 10 CFR 50.75(h) as recommended by NEI.

NRC should modify the proposed rule at 10 CFR 50.75(e)(1)(i) through (ii) to clearly allow credit for decommissioning trust earnings during periods of safe storage, final dismantlement, and license termination, regardless of whether a licensee uses a site-specific

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cost estimate or the NRC "formula amount." There is no basis to limit the period in either case. In addition, TVA believes NRC should allow licensees to take credit for decommissioning trust earnings through the projected decommissioning period before five years of the projected end of the operations and the submission of a preliminary decommissioning cost estimate. The NRC should recognize the fact that, no matter the length of time in which a licensee may plan to conduct decommissioning activities, such activities cannot and will not take place immediately upon termination of operation. There is no realistic basis for requiring that the total amount of decommissioning funds be available upon the termination of operations when expenditures must necessarily take place over some period of years thereafter. TVA understands that, for planning purposes, some standard, reasonable amount of time may be established in calculating this credit for projected earnings. However, rather than prohibiting assuming any projected credit until licensees are within five years of the end of operations, TVA recommends that NRC allow licensees to assume up to a maximum of ten years of earnings credit through the decommissioning period. It would be relatively simple to calculate earnings on the fund through this period as costs are covered and the fund is gradually depleted. In addition, this period would/could be adjusted, and any funding revisions made, when the preliminary decommissioning cost estimate is provided under 10 CFR 50.75(f)(2). TVA recommends that the language in the second paragraph of section 2.2.8 of DG-1106 be revised accordingly.

NRC should also modify the proposed rule at 10 CFR 50.75(h)(1)(i)(A) to allow investments in nonnuclear sector collective or commingled funds, such as "common trust funds." Many decommissioning trusts hold substantial investments in "common trust funds" which are collective or commingled funds that are like mutual funds, but are not open to investment by the general public and are not classified as mutual funds. Typically, such funds are maintained for purposes of pooled investment by trusts that have mutually consistent, long-term investment goals and needs. They are therefore advantageous as trust investments, because they are not subject to the higher levels of churning (with resulting fees and capital gains taxation) which mutual funds can experience. Because such funds are functionally very similar to mutual funds, investments in collective or commingled funds should be subject to the same exception that applies to mutual funds.

TVA appreciates the opportunity to comment on the proposed rule.

Sincerely,


Mark J. Burzynski
Manager
Nuclear Licensing



FAX COVER

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Subject: Comments on Proposed Rule on Decommissioning Trust Provisions
& Draft RegGuide DS-1106

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