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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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Decommissioning Trust Provisions

Docket No. OFFICE OF SECRETARY
RIN 3150-AG62 RULEMAKINGS AND
ADJUDICATIONS STAFF

**PUBLIC SYSTEMS' COMMENTS IN RESPONSE TO
NOTICE OF PROPOSED RULEMAKING**

Pursuant to the Nuclear Regulatory Commission's Notice of Proposed Rulemaking, 66 Fed. Reg. 29244 (2001), the publicly owned electric utilities listed on Appendix A ("Public Systems") hereby submit their comments concerning the change in regulations proposed in the Notice.

BACKGROUND

The Nuclear Regulatory Commission ("NRC" or "Commission") requests comments on proposed amendments to its regulations governing decommissioning trust funds. The NRC seeks to amend the current regulations in order to ensure, within the context of electric industry deregulation, the availability of decommissioning trust funds for their intended purpose. In the past, oversight of decommissioning trust funds was conducted primarily by the Federal Energy Regulatory Commission ("FERC") and state public utility commissions ("State PUCs"). Under deregulation, the NRC anticipates diminished oversight of electric utilities by FERC and State PUCs, as well as transfers of nuclear generating units to entities not subject to FERC or State PUC regulation. Thus, the Commission seeks to increase its own regulatory oversight of decommissioning trust funds, and to establish new standards governing decommissioning trust fund management.

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COMMENTS

These comments reflect the views of certain members of the public power community who are licensees and owners of nuclear plants and, to varying extents, purchasers of power from electric utilities that own nuclear plants. The public power community thus has a range of interests in this rulemaking. Insofar as decommissioning is concerned, these public entities share many of the same problems and characteristics as the investor-owned utility sector. At the same time, however, they have other characteristics that distinguish them from the private power utilities, and any rules that affect the electric utility “industry” should recognize and take into consideration these differences. These are discussed in more detail below.

Public Systems recognize the Commission’s concerns about ensuring the security and availability of nuclear decommissioning funds in a deregulated utility environment. However, the proposed rule does not address certain matters Public Systems believe to be pertinent and necessary to address if the NRC is to accomplish its goals; in other areas the proposed rule would exceed what Public Systems believe is necessary to meet the Commission’s objectives. Public Systems submit as follows:

- The proposed rule would impose requirements that potentially conflict with existing contractual agreements and existing state and federal regulations.
- The proposed rule does not adequately recognize that all the requirements prescribed are not necessary or proper for publicly-owned utilities.
- The proposed rule does not clearly state what legal effect the NRC’s allowing disbursement of requested decommissioning funds may have on parties’ rights under agreements or regulations governing the expenditure of decommissioning funds.

- The proposed rule does not recognize that there may be an adverse financial impact on decommissioning funds resulting from compliance with the proposed rule. Any new rule should provide for a reasonable transition period to avoid, or at least minimize, such adverse impacts. Grandfathering or a reasonable transition period should be allowed for existing decommissioning funding arrangements that cannot be amended or terminated without substantial penalties.
- The disbursement process should provide an option for a licensee to be the party presenting the request for disbursements and the party to disburse the funds, rather than the fund trustee.
- The proposed rule does not make clear whether the ease of transfer of nuclear plant ownership interests would be facilitated by more uniform decommissioning trust agreements, or whether it is the NRC's intent ultimately to require uniform agreements.
- The NRC should convene a public technical conference with representatives of the Federal Energy Regulatory Commission (FERC) and the National Association of Regulatory Utility Commissioners (NARUC) to address potential conflicts between the proposed regulations and existing FERC and state requirements affecting decommissioning funding, as well as other pertinent matters raised by the proposed regulations.

Each of the foregoing points is discussed more fully below.

A. *The Proposed Rule May Result in Agreements that Conflict with State and Federal Requirements. The NRC Should Adopt a Rule that Avoids Such Conflicts.*

The proposed regulations may well require changes in existing decommissioning trust agreements that would create a conflict with requirements imposed by state authorities, existing financing resolutions, or by FERC. For example, FERC applies a "prudent investor" standard to decommissioning trusts, and requires a quarterly deposit of amounts included in FERC jurisdictional rates to fund nuclear power plant decommissioning. 18 CFR § 35.32(a)(3), (10) (2001). If the standards imposed by the

proposed NRC regulations differ from the standards underlying a fund established pursuant to the FERC or other state regulations, then the licensee could be placed in a conflicting situation, absent a generic rule that resolves the conflict. Where there is a clear conflict between the standards that would be imposed by the proposed NRC regulations and the standards underlying an existing agreement, one such resolution would be for the NRC to defer to the standards underlying the existing agreement (assuming it has been approved already by the applicable state or local authority or by the FERC). Another resolution might be for the licensee to adopt provisions conforming to the NRC regulation in lieu of the state-approved or FERC-approved requirements. Still another approach might be to leave the resolution of all or a class of such conflicts to a case by case disposition by the NRC.

The matter of how best to resolve conflicts between the standards underlying the proposed regulation and the standards underlying existing trust arrangements is one that requires further examination by the NRC before a final rule is implemented. Among the matters that should be addressed is whether there are many conflicts or just a few, and whether there are any conflicts in particular that are of special concern to the NRC. Many of the Public Systems currently provide for a decommissioning trust fund pursuant to state laws and to resolutions passed in conjunction with their financing of the nuclear plant ownership interests they have. As a result, the decommissioning trust fund agreements they have could reflect these multiple considerations. (In this regard, public systems are not subject to the FERC's regulations, inasmuch as they are not public utilities under the applicable FERC regulations, 18 C.F.R. § 35.32 (2001), but their decommissioning trust funds are often subject to state regulation.) In those instances of

which Public Systems are aware, the state laws governing municipal investments are quite conservative, limiting permissible investments to highly secure instruments such as Treasury bonds, general obligation municipal bonds, and similar investments. *See, e.g.*, Section 159-30 of the North Carolina General Statutes, which is applicable to municipal joint action agencies pursuant to N.C.G.S. § 159-41 (attached hereto as Appendix B).

In addition, Public Systems may well have incentives to participate more directly in the management of their funds since they are more likely to continue as fully engaged, vertically integrated utilities. Thus, what may be seen by the NRC as a baseline criterion for a vastly restructured electric utility industry may simply be inappropriate, unnecessary, or require additional layers that do not assist in the implementation of the NRC's goals and will cause Public Systems to incur additional expenses. Accordingly, the Public Systems request the opportunity to further inform the NRC of these separate considerations in more detail, should the NRC decide to apply its proposals in the form presented in the rulemaking. In any event, even without attempting to conduct a comprehensive survey of the matter, the Public Systems are aware of differences or conflicts between the terms of existing trust agreements (which were drafted to conform to existing state regulations or in conjunction with financing arrangements) and terms that would be required to conform to the proposed regulations.

Given these circumstances, Public Systems offer two suggestions. First, we suggest that the NRC include as part of its rulemaking procedure a way for a licensee to ascertain if a conflict of applicable standards requires the execution of an entirely new decommissioning trust agreement, or whether the conflict can be resolved within the terms of the existing agreement. For example, categories of conflicts might be described

as to which the NRC would defer to the existing state or federal standards. In the case of other kinds of conflicts, the NRC may wish to state that the standards underlying the proposed regulations must be followed (perhaps even reserving the right to decide what conforming language is required).

Second, as we will discuss in more detail below, the NRC should convene a public technical conference with FERC and NARUC representatives to explore the scope and nature of conflicts between existing standards and the standards underlying the proposed regulations. Such a conference would help the NRC obtain a better understanding of the extent to which the proposed regulations create conflicts with existing standards, and how best to resolve any such conflicts. Obviously, it would be better to evaluate the issue before adopting the proposed regulations, so that the regulations can be adjusted (if necessary) to minimize any such conflicts.

B. The Proposed Rule Should Clearly Exempt Publicly-Owned Utility Licensees from Certain of the Proposed Investment Limitations.

The proposed rule prohibits investment of decommissioning trust funds in, *inter alia*, a licensee's affiliates or subsidiaries. Public Systems are concerned that this limitation not be interpreted to prevent a municipal licensee from investing in securities issued by the state government, another municipality, or other instrumentality of the state in which the municipal licensee is located. Such entities are not "affiliates" of the licensee in the sense of a corporate affiliate, and investments by a municipal licensee in securities issued by such entities do not create the same concerns as would arise from a private licensee's investment in the securities of a corporate affiliate.

For these reasons, the Commission should clarify that municipal licensees, or other publicly-owned utility licensees, which might be state instrumentalities, would not

be prohibited from investing in state or local bonds issued by other instrumentalities of the same state, provided those securities meet other reasonable investment criteria (*i.e.*, they meet the “investment grade” requirement or other applicable criteria). Municipal or other publicly-owned licensees should be permitted to invest in debt securities of a state or other municipalities because such investments do not implicate the same concerns that led the NRC to propose such a protective measure in the case of corporate licensees. If the NRC rejects this proposed clarification, Public Systems request that the debt securities and like instruments already held in the decommissioning trust accounts created by Public Systems be exempted from the restriction.

C. The Proposed Rule Would Impose a Notice Requirement that May Not Comport with Existing Contracts to Which a Licensee Is a Party.

The proposed rule would require that 30 days prior notice be given to the NRC prior to disbursement of trust funds. However, existing joint ownership agreements may impose on a co-owner terms of payment for decommissioning costs that do not square with the NRC’s requirement for 30 days advance notice of disbursements. For example, the contract may require that a statement rendered by the operating owner must be paid by other co-owners within a time period of 30 days or less. It would be impossible for the co-owner to satisfy the 30-day notice requirement of the proposed regulation for disbursement by the trustee and still make timely payment under its contract. For that reason, the 30-day notice requirement for disbursements should be waived or modified where it conflicts with provisions of a joint ownership contract to which a licensee is a party.¹

¹ It appears from Section 2.2.2.4 of the draft Regulatory Guide 1.159 that the 30-day notice requirement

A similar set of concerns relates to circumstances where a licensee makes advances to the operator for decommissioning costs expected to be incurred in the future (e.g., the co-owner makes payment on January 1 for decommissioning costs expected to be incurred during the entire month of January). Such provisions are not unusual in joint ownership agreements. The Commission should clarify that its proposed regulation would not preclude disbursements from the trust fund to allow a licensee to make payments for decommissioning on the basis of projected costs, where the relevant joint ownership agreement so provides.

Finally, a co-owner may decide to address the 30-day notice requirement by creating a working capital fund in order to stay current on its payments for decommissioning, and then seek replenishment of that fund through disbursements from the decommissioning trust fund. Such a cash management approach might raise a question, however, as to whether replenishment of the decommissioning working capital fund would be a permissible disbursement. The Commission should clarify that such replenishment would be a permissible basis for seeking disbursement of funds held in a decommissioning trust (so long as the activities funded by the original draw-down of the working capital account were legitimate decommissioning activities).

would no longer apply once decommissioning activities pursuant to a plan submitted under 10 C.F.R. § 50.82(a)(8) have commenced. This limitation should be incorporated into the text of the proposed regulation, however, since the proposed regulation is not limited by its terms in such manner. Assuming the 30-day notice would not apply to disbursements pursuant to a filed decommissioning plan, the concerns discussed in text would be reduced (though not eliminated).

D. The NRC's Process for Allowing Disbursement of Decommissioning Funds Should Be of No Legal Effect for Other Contractual Purposes.

Under the proposed regulation, where a request for disbursement has been received from the trustee by the NRC and the NRC has not objected to the disbursement within 30 days, the disbursement may be made. However, the proposed rule does not clearly state what legal effect the NRC's allowing disbursement of requested decommissioning funds may have on parties' rights under agreements or regulations governing the expenditure of decommissioning funds.

As joint (and typically non-operating) owners of nuclear plants, Public Systems are concerned that the NRC's 30 days silence, or approval after objection, could be characterized as an "approval" of the disbursements for purposes of defending against a later challenge as to the adequacy of the decommissioning work completed or other contractual issues. For example, in a dispute about the prudence of a decommissioning expenditure, the entity defending against the claim might point to the NRC's allowance of a disbursement as establishing the prudence of that expenditure. Public Systems believe that such a characterization of the NRC's silence or approval after objection would be inappropriate, and seek clarification to prevent such misuse.

In the regulation that it has proposed for adoption, the NRC should make clear that its silence as to a proposed disbursement, or its approval after objection, will have no effect upon parties' rights under contracts or other regulations governing the expenditure of decommissioning funds. Stated differently, the 30-day notice and subsequent NRC action or silence should be viewed as essentially procedural in nature, with no implication that the NRC has passed on the prudence or reasonableness of the underlying expenditure, and no implication that the NRC has determined the expenditure to be

consistent with contractual or other regulatory requirements. The parties' legal rights under existing contracts or regulations should be unaffected by the satisfaction of the 30-day notice requirement.

E. The Regulation Should Grandfather Existing Trust Arrangements or Provide a Grace Period for Compliance in the Event that Immediate Compliance Would Result in Adverse Financial Consequences to the Licensee or to the Trust Fund.

To the extent that existing decommissioning trust fund agreements may not comport with the proposed regulations, those agreements may need to be amended. If the terms of a particular trust agreement do not permit the required amendment, the trust may need to be terminated, the corpus of the trust liquidated, and a new trust constituted in order to comply with the regulations. In either circumstance, it is possible that compliance with the regulations may impose significant cost on a licensee.² In particular, the possible termination of a trust and liquidation of trust assets could impose substantial costs on a licensee (particularly if specific investments held in the trust carry early redemption penalties, or if investment market conditions at the time of liquidation are adverse).

For these reasons, the final rule should provide that if compliance with the new regulations would result in a loss in the value of the trust fund assets due to the need to create a new trust or for other reasons, the existing trust arrangement should be “grandfathered” and exempted from compliance. An alternative (but less effective) remedy would be to afford a licensee a reasonable grace period or the right to seek a

² In this regard, Public Systems have grave doubt about the NRC's estimate that only 40-80 hours are required for a licensee to revise its trust agreement to comply with the proposed regulations. The complexity of the issues presented by the proposed regulation, as well as the care which must be exercised in such matters, cause Public Systems to believe that this estimate is unduly low.

waiver from the NRC. The NRC regulations should permit grandfathering or an adequate grace period for compliance if a licensee can demonstrate that material costs would be incurred or a diminution in the value of the trust would result if immediate compliance were required.

F. The Disbursement Process Should Provide an Option for a Licensee to be the Party Presenting the Request for Disbursements and the Party to Disburse the Funds, Rather than the Fund Trustee.

The proposed regulation provides for the trustee of the decommissioning fund to be the party that presents to the NRC a request for disbursement, and apparently also contemplates that the trustee would be the party actually making payments to decommissioning contractors. These provisions thrust upon a trustee duties that are outside its area of responsibility and expertise.

Public Systems submit that there is no reason to exclude individual licensees from matters relating to disbursements from the decommissioning fund. Having the trustee be the sole entity to submit requests for disbursement needlessly adds cost and delay to the process. Furthermore, having the trustee make payments to decommissioning contractors (if this is, indeed, the NRC's intent) forces the trustee to become directly and deeply involved in the commercial payment cycle (*e.g.*, determining which contractors are due payment, and for how much, and when). This is an area in which trustees are not generally involved, and in which we doubt they wish to become involved.³ Forcing trustees to discharge these duties will necessarily add to the administrative costs of the

³ By making the trustee the "paymaster" for the decommissioning process, such involvement could expose a trustee to liability for conduct that is outside the scope of what is normally thought of as a trustee's fiduciary obligation to preserve trust assets.

trust, while providing no greater assurance of the availability of funds for decommissioning.

At a minimum, the NRC should provide the option for a licensee to be the party that submits the disbursement requests and that transmits payments to decommissioning contractors. With such an option at their disposal, the affected parties can then make a reasonable business decision as to whether they wish to incur the added cost of having the trustee perform these duties, or, in the alternative, whether they prefer to allow the licensee to handle disbursement requests and payments.

G. In Order to Facilitate License Transfers, the NRC Should Clarify that Its Regulation Will Have No Effect on the Allocation of Rights, Obligations or Liabilities Established by Contract or Directly Applicable Orders.

The NRC states that one objective of its rulemaking is to simplify transfers of licenses, such as would attend the sale of a nuclear plant ownership interest. One element of facilitating the transfer of ownership interests is that the involved parties have a clear understanding of their respective rights, obligations and liabilities subsequent to any transfer. Generally, these matters are addressed in the contracts executed in connection with the sale of an ownership interest and in the related orders approving a license transfer.

The goal of facilitating license transfers would be compromised if the proposed regulation could be interpreted as affecting in any manner the allocation of rights, obligations and liabilities established through the relevant contracts and applicable regulatory or judicial decisions. This concern is heightened to the extent that the instant rulemaking may be the first step toward imposition of mandatory uniform trust agreement provisions. If mandatory uniform trust agreement provisions were required, and if those

provisions were viewed as affecting the allocation of rights, obligations and liabilities in connection with license transfers, the NRC may create an unintended impediment to plant transfers in the future. In order to avoid this result, the NRC should expressly state that its proposed regulation would not affect in any manner the rights, obligations and liabilities of the parties involved in the sale of a nuclear plant ownership interest.

H. The NRC Should Convene a Public Technical Conference to Explore Issues Relating to the Proposed Regulation.

As noted in Section A above, the standards reflected in the proposed regulation appear to conflict in various respects with the standards and requirements underlying existing decommissioning trust agreements formulated in compliance with current federal and state requirements. However, the scope and severity of such conflicts are not immediately clear, in particular since there is a variety of state-level requirements bearing on the form of decommissioning trust funds and their permitted investments. In Public Systems' view, the NRC should not ignore these conflicts in acting on the proposed regulations, as the additional costs of making what might be extensive changes and disrupting arrangements already in place may not be necessary to achieve the stated objectives of this rulemaking.

An agency's first step in any such circumstance should be to gather more information—in this case, information about potential conflicts between the proposed regulation and existing state and federal standards governing decommissioning funding, and the extent of changes that would be required in existing contracts establishing and governing decommissioning. The most expeditious way for the NRC to gather such information would be to convene a public technical conference. Representatives from the nuclear industry, as well as from FERC and NARUC knowledgeable in this area, should

be asked to participate, and representatives of the public should be permitted to share their own views about potential conflicts in standards and other related issues.⁴ The NRC should revisit its proposed regulation following the technical conference, and should incorporate into its proposed regulation any changes deemed to be appropriate in order to resolve conflicts with existing federal and state standards, if it determines to go forward with this regulation. A revised notice of proposed rulemaking should then be issued, with an opportunity for public comment on the modified proposed regulation.

⁴ For example, a related issue that might properly be addressed is the question of how excess decommissioning collections are to be handled upon the completion of decommissioning. The concept of rebating excess decommissioning funds to ratepayers is one that may have merit in principle, but may no longer be achievable given the restructuring of the electric utility industry (in which some nuclear plant owners do not have “ratepayers” in the usual sense, but instead sell their shares of plant output into competitive wholesale power markets). However, 18 C.F.R. § 35.32 still requires excess funds collected from FERC jurisdictional customers to be returned to such jurisdictional customers.

Respectfully submitted,

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APPENDIX A

MEMBERS OF THE "PUBLIC SYSTEMS" GROUP

City of Anaheim, California

The City of Anaheim, California ("Anaheim") owns and operates a municipal electric utility system and provides retail electric service to residential, commercial and industrial customers in and around the City. Anaheim is the owner of 3.16% undivided interests in Units 2 and 3 of the San Onofre Nuclear Generating Station, which is operated by Southern California Edison Company.

Florida Municipal Power Agency

Florida Municipal Power Agency ("FMPA") is a political subdivision of the State of Florida engaged in the development of bulk power supply for its municipal electric system members. FMPA is the owner of an 8.806% undivided ownership interest in Unit No. 2 at the St. Lucie nuclear power station, a two-unit electric generating facility located near Fort Pierce, Florida and operated by Florida Power & Light Company. In addition, certain of FMPA's members have entitlements to output from the Crystal River No. 3 nuclear generating unit, operated by Florida Power Corporation.

Massachusetts Municipal Wholesale Electric Company

Massachusetts Municipal Wholesale Electric Company ("MMWEC") is a political subdivision of the Commonwealth of Massachusetts engaged in the development of bulk power supply for its municipal electric system members. MMWEC is a joint owner of Millstone Unit No. 3 (a nuclear electric generating unit located at the three-unit

Millstone station operated by Northeast Utilities and located near Waterford, Connecticut) and Unit No. 1 at the Seabrook nuclear power station (a single-unit generating station operated by Public Service Company of New Hampshire and located in Seabrook, New Hampshire). MMWEC's share of Millstone 3 capability is 55.2 megawatts, and its share of Seabrook 1 capability is 133.3 megawatts.

New Hampshire Electric Cooperative, Inc.

New Hampshire Electric Cooperative, Inc. ("NHEC") is a consumer-owned electric cooperative that provides service in parts of nine New Hampshire counties. NHEC is the owner of a 2.17% undivided ownership interest in Unit No. 1 at the Seabrook Nuclear Station, which is operated by Public Service Company of New Hampshire (a subsidiary of Northeast Utilities).

North Carolina Municipal Power Agency No. 1

North Carolina Municipal Power Agency No. 1 (NCMPA 1) is a joint action municipal power supply agency created under Chapter 159B of the General Statutes of North Carolina. NCMPA 1 is the owner of a 75% undivided ownership interest in Unit No. 2 at the Catawba Nuclear Station, a two-unit nuclear generating station operated by Duke Power Company. Through the contractual cost sharing provisions of its joint ownership contracts with Duke, NCMPA 1 bears 37.5% of the total costs of the Catawba Nuclear Station.

North Carolina Eastern Municipal Power Agency

North Carolina Eastern Municipal Power Agency (NCEMPA) also is a joint action municipal power supply agency created under Chapter 159B of the General Statutes of North Carolina. NCEMPA is the owner of 18.33% undivided ownership

interests in Units 1 and 2 at the Brunswick Steam Electric Plant, and a 16.17% undivided ownership interest in Unit No. 1 at the Shearon Harris Nuclear Power Plant. The Brunswick and Harris stations are operated by Carolina Power & Light Company, which also owns the remaining portions of the enumerated units.

Piedmont Municipal Power Agency

Piedmont Municipal Power Agency (“Piedmont Power”) is a public body and body corporate and politic of the State of South Carolina that was incorporated under South Carolina’s Joint Municipal Electric Power and Energy Act on January 11, 1979. Piedmont Power is the bulk electric power supplier to ten South Carolina municipal electric systems, and has been supplying power and energy to its participants since June 21, 1985. Piedmont Power is the owner of a 25% undivided ownership interest (representing 286 MW) in Unit No. 2 of the Catawba Nuclear Station, which is operated by Duke Power Company. Through the contractual cost sharing provisions of its joint ownership contracts with Duke, Piedmont Power bears 12.5% of the total costs of the Catawba Nuclear Station.

APPENDIX B

Sections 159-30 and 159-41 of the North Carolina General Statutes

§ 159-30. Investment of idle funds.

(a) A local government or public authority may deposit at interest or invest all or part of the cash balance of any fund. The finance officer shall manage investments subject to whatever restrictions and directions the governing board may impose. The finance officer shall have the power to purchase, sell, and exchange securities on behalf of the governing board. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(b) Moneys may be deposited at interest in any bank, savings and loan association, or trust company in this State in the form of certificates of deposit or such other forms of time deposit as the Commission may approve. Investment deposits, including investment deposits of a mutual fund for local government investment established under subdivision (c)(8) of this section, shall be secured as provided in G.S. 159-31(b).

(c) Moneys may be invested in the following classes of securities, and no others:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
- (2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
- (3) Obligations of the State of North Carolina.
- (4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.
- (5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal

savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings Institutions Division of the Department of Commerce of the State of North Carolina, be fully collateralized.

(6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

(7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

(8) Participating shares in a mutual fund for local government investment; provided that the investments of the fund are limited to those qualifying for investment under this subsection (c) and that said fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.

(9) A commingled investment pool established and administered by the State Treasurer pursuant to G.S. 147-69.3.

(10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to G.S. 160A-460 through G.S. 160A-464, if the investments of the pool are limited to those qualifying for investment under this subsection (c).

(11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.

(12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:

a. Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

b. A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;

c. Such securities are free and clear of any adverse third party claims; and

d. Such repurchase agreement is in a form satisfactory to the local government or public authority.

(13) In connection with funds held by or on behalf of a local government or public authority, which funds are subject to the arbitrage and rebate

provisions of the Internal Revenue Code of 1986, as amended, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.

(d) Investment securities may be bought, sold, and traded by private negotiation, and local governments and public authorities may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program. Securities and deposit certificates shall be in the custody of the finance officer who shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the finance officer.

(1957, c. 864, s. 1; 1967, c. 798, ss. 1, 2; 1969, c. 862; 1971, c. 780, s. 1; 1973, c. 474, ss. 24, 25; 1975, c. 481; 1977, c. 575; 1979, c. 717, s. 2; 1981, c. 445, ss. 1-3; 1983, c. 158, ss. 1, 2; 1987, c. 672, s. 1; 1989, c. 76, s. 31, c. 751, s. 7(46); 1991 (Reg. Sess., 1992), c. 959, s. 77, c. 1007, s. 40; 1993, c. 553, s. 55.)

§ 159-41. Special regulations pertaining to joint municipal power agencies.

(a) For the purposes of this Part, "joint agency" means a public body corporate and politic organized in accordance with the provisions of Chapter 159B, or the combination or recombination of any joint agencies so organized.

(b) Except as provided in this Part, none of the provisions of Article 3 of this Chapter shall apply to joint agencies. Whenever the provisions of this Part and the

provisions of Chapter 159B of the General Statutes shall conflict, the provisions of Chapter 159B shall govern.

(c) Each joint agency shall operate under an annual balanced budget resolution adopted by the governing board and entered into the minutes. A budget is balanced when the sum of the appropriations is equal to the sum of estimated net revenues and appropriated fund balances. The budget resolution of a joint agency shall cover a fiscal year beginning January 1 and ending December 31, except that the Local Government Commission, if it determines that a different fiscal year would facilitate the agency's financial operations, may enter an order permitting an agency to operate under a fiscal year other than from January 1 to December 31.

(d) The following directions and limitations shall bind the governing board in adopting the budget resolution:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.

(3) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated.

(4) The sum of estimated net revenue and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balances in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenue, as those figures stand at the close of the fiscal year preceding the budget year.

(e) The governing board of the joint agency may amend the budget resolution at any time after its adoption and may authorize its designated finance officer to transfer moneys from one appropriation to another, subject to such limitations and procedures as it may prescribe. All such transfers will be reported to the governing board or its executive committee at its next regular meeting and shall be entered in the minutes.

(f) Joint agencies are subject to the following sections of Article 3 of this Chapter, to the same extent as a "public authority," provided, however, the term "budget ordinance" as used in such sections shall be interpreted for the purposes of this Part to mean the budget resolution of a joint agency:

(1) G.S. 159-9, provided, however, that the governing board of an agency may designate as budget officer someone other than a member of the governing board or an officer or employee of the agency.

(2) G.S. 159-12, provided, however, that the provision relating to making the budget available to the news media of a county shall not apply to a joint agency.

(3) G.S. 159-13.2.

(4) G.S. 159-16.

(5) G.S. 159-18.

(6) G.S. 159-19.

(7) G.S. 159-21.

(8) G.S. 159-22, provided, however, that the provision restricting transfers to funds maintained pursuant to G.S. 159-13(a) shall not apply to a joint agency.

(9) G.S. 159-24.

(10) G.S. 159-25.

(11) G.S. 159-26.

(12) G.S. 159-28.

(13) G.S. 159-28.1.

(14) G.S. 159-29.

(15) G.S. 159-30.

(16) G.S. 159-31.

(17) G.S. 159-32.

(18) G.S. 159-33.

(19) G.S. 159-33.1.

(20) G.S. 159-34.

(21) G.S. 159-36.

(22) G.S. 159-38.

(1979, c. 685, s. 1.)