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Mellon Bank

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Michael E. Bleier
General Counsel

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

ATTENTION: Rulemakings and Adjudications Staff

SUBJECT: Mellon Bank, N.A.'s Comments on NRC's Proposed Rule on
Decommissioning Trust Provisions & Draft Regulatory Guide DG-1106

Dear Ms. Vietti-Cook:

Mellon Bank, N.A ("Mellon") submits these comments in response to the NRC's request for public comments on its Proposed Rule regarding Decommissioning Trust Provisions, 66 FR 29244 (May 30, 2001) and Draft Regulatory Guide DG-1106 (Proposed Revision 1 of Regulatory Guide 1.159), "Assuring the Availability of Funds for Decommissioning Nuclear Reactors."

Mellon acts as trustee with investment management authority ("Trustee") with respect to many nuclear decommissioning trust funds ("NDTs") and shares the Commission's interest in assuring that NDTs are properly managed in accordance with sound investment standards. Mellon further agrees that the proper management of NDTs will help assure the availability of funds for the decommissioning of nuclear power reactors and that it would be helpful if standard and consistent rules applied to all NDTs. However, Mellon believes that it would be burdensome, difficult and potentially very costly for Trustees of NDTs to comply with NRC rules and/or guidance that may be inconsistent with requirements that are currently imposed by state public utility commissions (PUCs) and/or the Federal Energy Regulatory Commission (FERC). Moreover, if it is necessary for NRC to impose an investment standard on any NDTs that are not subject to PUC or FERC standards, NRC should not establish its own investment standard, but rather should adopt the "prudent investor" standard already promulgated by FERC. That standard is both fully adequate and well understood.

The Proposed Rule sets forth two investment standards to be imposed on all NDTs: (1) "investment grade" rating for investments; and (2) the "prudent investor" standard. This would create a number of problems, because these standards may be inconsistent with investment standards already imposed by state PUCs and/or FERC. The NRC should avoid

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"dual regulation" of trust funds and, instead, continue to defer to any such state PUC or FERC standards.

To the extent NRC believes it necessary to impose a standard in its regulations, it should adopt the FERC "prudent investor" standard. As mentioned above, the "prudent investor" standard is well understood and fully adequate. The proposed "investment grade" standard is not a standard that is commonly used or applied in the investment management community. Creating a standard that is not commonly used or understood in the investment management community is undesirable, could cause confusion and could unnecessarily limit NDTs' investment options. For example, if the proposed "investment grade" standard is adopted, certain index based strategies, such as a Wilshire 4500 strategy, may no longer be available to NDTs. Therefore, Mellon opposes NRC's adoption of any such "investment grade" standard and endorses the proposal of the Nuclear Energy Institute (NEI) to delete the "investment grade" standard currently found in the NRC's proposed language for 10 CFR 50.75(h)(i)(B), as set forth in NEI's comments.

We appreciate the opportunity to comment on the Proposed Rule.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Bleier". The signature is fluid and cursive, with a large initial "M" and "B".

Michael E. Bleier