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American Public Power Association

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTN.: Rulemakings and Adjudication Staff

Dear Secretary:

Re: Proposed Amendments to Regulations
Relating to Decommissioning Trust Provisions
under 10 CFR Part 50 Appearing in 66 Fed.
Reg. 29,244 (May 30, 2001)

Enclosed you will find comments of the American Public Power Association on the above
referenced proposed rulemaking, Docket No. RIN 3150-AG52.

If there are any questions, please contact Richard B. Geltman, Tele.: 202-467-2934; Fax:
202-467-2992; or e-mail: rgeltman@APPAnet.org.

Sincerely yours,

Richard B. Geltman, Esq.
General Counsel

Encl.

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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Decommissioning Trust Provisions

Docket No.

RIN 3150-AG52

**COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION
TO
NOTICE OF PROPOSED RULEMAKING**

Pursuant to the Nuclear Regulatory Commission's Notice of Proposed Rulemaking, 66 Fed. Reg. 29244 (2001), the American Public Power Association (APPA) hereby submits its comments concerning the change in regulations proposed in the Notice.

COMMENTS

The American Public Power Association is the national service organization representing the interests of more than 2,000 municipal and other state and locally owned electric utilities throughout the United States. Collectively, public power utilities deliver electric energy to one of every seven electricity consumers in the United States. In 1999, 11.1% of public power's generating capacity come from nuclear generating plants. Some APPA members are sole owners of nuclear plants; other APPA members own undivided interests in nuclear plants; and other APPA members are wholesale customers of utilities that generate electricity using nuclear power. Accordingly, numerous APPA members have a substantial interest in the proposed rules. APPA anticipates that the Nuclear Regulatory Commission (the "Commission") will receive individual and joint comments from APPA member utilities, to whose comments we commend the most careful attention. APPA's comments are not intended to substitute for or encapsulate those views.

APPA believes that public power utilities that have an ownership interest share many of the views of investor-owned and cooperatively owned nuclear plant owners. Yet, as responsible, community owners, public power utilities continue to serve the public interest and operate under state and local governmental rules and oversight, even as state and federal deregulation diminishes the oversight of public utilities provided by the Federal Energy Regulatory Commission (FERC) and the state public utility commissions (PUC's). State and federal deregulation efforts do not usually directly affect public power utilities because they are non-jurisdictional both under FERC enabling legislation and most state PUC's. Therefore, it is not necessary for the Commission to increase its regulatory

oversight of decommissioning trust funds of public power utilities in the same way as the Commission needs to for their private sector counterparts.

APPA supports the recommendation of the Public Systems that call for the convening of a public technical conference to address potential conflicts between the proposed regulations and existing FERC and state requirements affecting decommissioning funding, followed by revisions to the proposed rules and a revised notice of proposed rulemaking. Among APPA's principal concerns with the existing regulatory proposals are provisions: that would limit the right of public power owners to direct decommissioning trust fund assets to investments that are permitted and regulated under applicable state and local law, including investments in securities issued by the state government of a municipal licensee, another municipality or other state or local municipality; that would conflict with standards underlying existing trust arrangements; that would conflict with an existing contract, require a breach of an existing contract, or diminish the underlying collateral of an existing security; that would require the licensee to suffer additional compliance costs without federal compensation; or that might affect the rights of public power minority owners upon license transfers of owner-operators.

APPA asserts that under the President's Executive Order 13132 the Commission must give careful consideration to the particular effects its rules may have on public power utilities and appropriately involve state and local governments in the development of rules that affect them. Therefore, APPA appreciates this opportunity to provide its views and looks forward to a technical conference which can assure that unneeded or unintended consequences are not imposed on public power nuclear facility owners.

Respectfully submitted,

Richard B. Geltman, Esq.
General Counsel

August 13, 2001