

**DOCKET NUMBER
PROPOSED RULE PR 50**

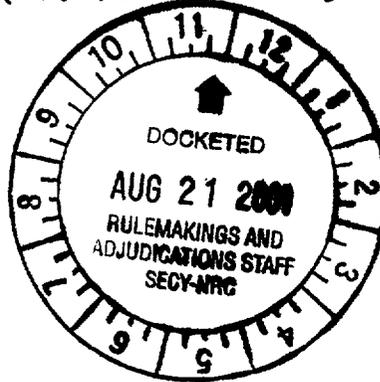
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Dominion

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(66FR 29244)



August 13, 2001

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

GL01-012

ATTN: Rulemakings and Adjudications Staff

**REQUEST FOR COMMENTS ON THE PROPOSED RULE FOR
DECOMMISSIONING TRUST PROVISIONS**

Dear Ms. Vietti-Cook,

Virginia Electric and Power Company (Dominion) appreciates the opportunity to provide comments on the proposed rule regarding Decommissioning Trust Provisions and the Draft Regulatory Guide DG-1106, which appeared in the Federal Register, volume 66, number 104 on May 30, 2001. Comments are provided referencing the proposed rule section but apply equally to the draft Regulatory Guide.

Dominion endorses the comments provided separately by the Nuclear Energy Institute (NEI) on behalf of the industry. In addition, Dominion reiterates the following concerns:

1. Section 10 CFR 50.75(h) of the proposed rule imposes that both (B) investments must be "investment grade" and (C) that the trustee, etc., adhere to a "prudent investor standard" in investing the funds. It is our position that only the "prudent investor" standard (defined as the same standard imposed by FERC's regulations) is required in the proposed rule. We submit that the "investment grade" standard is not clearly defined in the regulation, would be subject to the vagaries of future regulatory interpretation and therefore is unnecessarily restrictive.

Diversification is fundamental to prudent investing and should be required. Licensees, and trustees in the absence of directions from licensees, should be authorized to prudently allocate trust assets across the entire risk/return spectrum. There are several assets classes, other than "investment grade" bonds and publicly traded U.S. common stocks, that may enhance the trust's

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return for a given level of risk, or reduce its risk, while maintaining an expected return. Asset classes may individually be more risky than U.S. stocks, but when included as investments in a diversified portfolio they can increase the portfolio's expected return and/or reduce its risk.

The long-term nature of the decommissioning liability and related long-term investment horizon (20-50 years) provides the trust an opportunity to capture an illiquidity premium offered by the capital markets to investors in private equity, timber and real estate. It is prudent for licensees and/or trustees to opportunistically and strategically consider the appropriateness of such investments for the trust. In addition, the probability of fully funding the decommissioning liability will be enhanced and funding costs should be lower. Prudent diversification can be beneficial for all stakeholders.

2. Dominion recommends the proposed regulation stipulated in 10 CFR 50.75(h)(1)(i)(D) be removed from the proposed rule. Assuming the NRC agrees that the "prudent investor standard" is the standard to impose and that acceptance of this standard implies that Nuclear Decommissioning Trusts (NDTs) may be more broadly diversified to include alternative investments such as private equity, then the company should be able to select funds and managers that it considers the best qualified to do this. We do not consider this the day to day management of the funds, but rather strategic management of the funds. Day-to-day investment decisions should be defined as "the hands on management of a stock or bond portfolio, which includes making decisions to buy and sell individual stocks and bonds". It should not include formulation of the trust's investment policy and the selection of investment advisors, mutual funds, pooled funds, collective funds, and limited partnerships. Decisions to invest in such funds results in a long-term commitment. Licensees should be empowered to make these strategic decisions to ensure that the best strategies and advisors are employed for the trust. The Licensees interests are aligned with those of the trust, they have superior knowledge of the decommissioning liability and they have a broad base of financial and investment expertise. They also have experience as investment fiduciaries under the Employee Retirement Income Security Act (ERISA). Further, if necessary, they can retain the services of an investment consultant to assist in developing an investment policy and/or strategy and identification of investment advisors, funds and partnerships. Requiring a third party manager to administer such strategic investment decisions when the utility is well qualified to do the same is fiscally inefficient and simply increases the cost of managing the funds.
3. Clarification should be made in section 10 CFR 50.75(h)(1)(iii) as to what kinds of expenses are considered "ordinary administrative expenses" that could be paid from the fund without the 30-day advance notification to the NRC. The definition should be consistent with Internal Revenue Code (IRC) 468A(e)(4)(B) where allowed expenses are defined as "administrative costs

(including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund”.

If you would like further information, please contact either:

Ms. Sheri Tew sheri_tew@dom.com, or (804) 741-2368 or

Mr. Don Olson don_olson@dom.com, or (804) 273-2830

Respectfully,

A handwritten signature in black ink, appearing to read "D. A. Christian". The signature is fluid and cursive, with a long horizontal stroke at the end.

David A. Christian