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RULEMAKINGS AND ADJUDICATIONS STAFF
SECY-NRC

August 28, 2001

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

ATTN: Rulemakings and Adjudication Staff

Re: Comments on Proposed Rule to Amend Decommissioning Trust Fund Provisions (66 Fed. Reg. 29,244; May 30, 2001)

Dear Ms. Vietti-Cook:

On May 30, 2001, the Nuclear Regulatory Commission ("NRC") published in the *Federal Register* a Proposed Rule to amend its regulations related to decommissioning trust fund provisions for nuclear power plants. Attached hereto are comments regarding a specific provision of the proposed rule concerning decommissioning fund management.

We appreciate the opportunity to comment on the proposed rule.

Respectfully submitted,

William A. Horin

William A. Horin

Attachment

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SECY-02

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Comments on Proposed Rule to Amend Decommissioning Trust Fund Provisions <u>for Nuclear Power Plants (66 Fed. Reg. 29,244)</u>

<u>Proposed Rule</u>

The proposed rule sets forth in Proposed Section 10 C.F.R. §50.75(h)(1)(i)(A) restrictions on investments that may be made with funds in decommissioning trusts. Those restrictions would allow investments "tied to market indices or non-nuclear sector mutual funds" by trustees, managers, investment advisors, or other persons directing investment of the funds.

The proposed rule, however, also prohibits in Proposed Section 10 C.F.R. §50.75(h)(1)(i)(D) "licensees or its affiliates or subsidiaries" from acting as "investment manager" or from giving "day-to-day management direction" or "direction on individual investments." There are no exceptions to this prohibition.

<u>Recommended Revision to Proposed Section 10 C.F.R. §50.75(h)(1)(i)(D)</u>

For the reasons set forth below we recommend that Proposed Section 10 C.F.R. §50.75(h)(1)(i)(D) be revised. The recommended revision would permit a licensee, its affiliates or subsidiaries to administer directly funds contained within the trust where such administration is limited to funds tied to market indices.

Specifically, we recommend that the following be added to end of the final sentence in Proposed Section 10 C.F.R. §50.75(h)(1)(i)(D):

> ".., except in the case of passive fund management of trust funds where such management is limited to investments tracking market indices."

<u>Basis for Recommendation</u>

This proposal would permit passive index fund management by a licensee, its affiliates or subsidiaries. Fundamentally, this activity does not constitute "day-to-day management direction of the funds' investments or direction on individual investments by the funds from the licensee or its affiliates or subsidiaries." Rather, passive index funds replicate the performance of well-established index funds such as S&P 500 or Lehman bond indices. Passive index funds do not require active or day to day stock or security selection. Such funds simply buy securities in the index in the same weights as the index and thereby are able to replicate the performance of the index. The only transactional activity is to buy securities that are added to the index and sell securities that are deleted from the index. This activity would not involve the type of day-to-day fund management by licensees that would be of concern to the NRC and would satisfy the "prudent investor" standard, as set forth in Proposed Section 10 C.F.R. §50.75(h)(1)(i)(C).

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In addition, this activity could provide substantial cost savings to licensees. Rather than pay a money manager for this buy and hold strategy, the licensee can perform the mechanics necessary to participate in the index fund at a savings to the decommissioning trust fund.

Even now, nuclear decommissioning assets are routinely invested in passive equity strategies. According to the NISA Investment Advisors, L.L.C. 2000 Nuclear Decommissioning Trust survey of Trust Sponsors, 53% of the respondents (approximately 31 sponsors) reported a passive equity investment approach.[1] However, because of current and proposed NRC regulatory restrictions such strategies have been and would continue to be implemented by fund managers, rather than licensees.

Further evidence of the relative conservatism of such strategies is that pension funds, whose assets are invested to fund long-term retiree liabilities, also have well-established passive equity allocations. There is also extensive precedent for corporations and state pension funds to manage assets in the passive indices (both bonds and stocks) in-house rather than to hire outside money managers or trustees. Again, the rationale for this approach is primarily cost savings. It is cheaper to run large amounts of index funds in-house by the sponsor than pay an investment manager several basis points to perform the same function.

For these reasons, we believe that passive equity strategy options should be available to licensees and their NDT funds. This option will retain the safety of decommissioning fund investments, while allowing licensees to save money. This will be particularly important in future years as NDT assets grow and economies of scale are present to manage index funds in-house similar to pension plans today.

1 *See*, http://www.nisainvestmentadvisors.com/research/NDT2000/