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NRC ISSUES FINAL RULE ON DECOMMISSIONING TRUST PROVISIONS AND REGULATORY GUIDE

The Nuclear Regulatory Commission is revising its regulations on decommissioning trust provisions for commercial nuclear power plants, and issuing a regulatory guide that could be used by power plant licensees to implement the regulations.

The final rule will (1) help safeguard decommissioning trust funds from investment risks; (2) ensure licensees provide adequate information to NRC about their trusts; and (3) provide safeguard against improper payments from these trusts.

The rule requires that decommissioning trust agreements be in an appropriate form to provide greater assurance that an adequate amount of decommissioning funds will be available. Until recently, direct NRC oversight of the terms and conditions of the decommissioning trusts was not necessary because State regulators typically exercised this authority. With deregulation, however, this oversight may cease and the NRC may need to take a more active oversight role.

Also, based on the NRC's recent experience with transfers of operating licenses of several nuclear power plants, the NRC believes the final rule will help expedite similar transfers in the future by providing increased regulatory predictability. The final rule and accompanying revisions to regulatory guidance will provide uniform decommissioning trust terms and conditions for nuclear power reactor licensees that are not subject to State or Federal Energy Regulatory Commission regulation. All power reactor licensees will be required to notify the NRC in advance of decommissioning trust withdrawals if made prior to permanent cessation of operations.

Under the final rule, the criteria that have been required as conditions of license transfer in connection with the sale of nuclear power reactors will be incorporated as part of a proposed new section of Title 10 of the Code of Federal Regulations under Part 50.75. The conditions are as follows:

- The trust must be an external trust fund held in the United States, established pursuant to a written agreement with an entity that is an appropriate State or Federal government agency or whose operations are regulated by a State or Federal agency.

- The trust agreement must prohibit trust investments in securities or other obligations of any reactor owner or its affiliates, successors, or assigns, or provide that no more than 10% of their trust assets may be in these securities or other obligations.
- The trust agreement must prohibit investments in any entity owning one or more nuclear power plants (except for investments tied to general market indices or non-nuclear sector mutual funds) and prohibit investments in a mutual fund in which at least 50% of the fund is invested in the securities of a parent company whose subsidiary is an owner of a foreign or domestic nuclear power plant.
- The trust agreement must stipulate that the agreement cannot be amended in any material respect without 30 working days prior written notice to the NRC, and there is no objection from the NRC.
- The trust agreement must stipulate that the trustee, investment advisor, or anyone else directing investments made by the trust should act prudently.
- The trust agreement must provide that no disbursements or payments from the trust (other than payment of routine administrative expenses or for withdrawals made pursuant to 10 CFR 50.82 (a) (8)) may be made by the trustee until the trustee has first given the NRC 30 working days prior written notice and the NRC has not objected.
- The person directing the investment of the funds is prohibited from representing the licensee or its affiliates or subsidiaries as the investment manager for the funds or accepting 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.

A proposed rule on this subject was published in the Federal Register (66 FR 29244) on May 30 of last year. A total of 36 comments were received from licensees, utility groups, State agencies and commissions, the National Association of State Regulatory Utility Commissioners (NARUC), and investment management companies.

Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," Revision 1, contains guidance to be used by nuclear power plant licensees in implementing the changes in NRC regulations. It will be available shortly on the NRC Agency-wide Documents Access and Management System (ADAMS). Help in using ADAMS is available by contacting the NRC Public Document Room staff by telephone at 301-415-4737 or 1-800-397-4209, or by e-mail at pdr@nrc.gov. Single copies of the documents will also be available for inspection and/or copying for a fee in the NRC Public Document Room, located at 11555 Rockville Pike, Rockville, Maryland.

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