



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 22, 1999

OFFICE OF THE
GENERAL COUNSEL

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Stephen G. Burns *SG Burns*
Acting General Counsel

SUBJECT: S. 1793, "NUCLEAR DECOMMISSIONING ASSURANCE ACT of 1999"

On October 26, 1999, Senator Domenici introduced the "Nuclear Decommissioning Assurance Act of 1999" (S. 1793), which would require the NRC to determine on a facility specific basis for facilities licensed under 10 C.F.R. Part 50 what amounts must be deposited into nuclear decommissioning trust funds to assure "full and safe" decommissioning of the facility and to determine whether the "currently approved" level of utility rates would be sufficient for recovery

[REDACTED]

EX. 5

A summary of the bill's provisions provided below.

[REDACTED]

EX. 5

Summary

~~ORC FILE NUMBER 101~~

S. 1793 would allow a Part 50 licensee to petition the NRC for a determination of whether (a) "adequate amounts have been deposited or are being deposited in the nuclear decommissioning trust fund of the licensee"; and (b) "the future funding for any nuclear power plant owned in whole or in part by the licensee is assured." The bill would require the petitioner to disclose in the petition information on the amounts collected, the rates of future collections, the target amount, and other relevant data. In his floor statement introducing the bill, Senator Domenici stated that the petition process "allows full public notice and comment," 145 Cong.Rec. S.13183 (Oct. 26, 1999), although the bill itself is silent on the process to be applied and contains no judicial review provisions pertaining to the NRC's determination.

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In accordance with the Freedom of Information Act, exemptions 5
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Within 180 days of its receipt of a petition from a Part 50 licensee, the NRC would be required to issue a determination "regarding whether the nuclear decommissioning trust fund and the currently approved level of rates to recover the costs of the decommissioning obligation are adequate to ensure full and safe decommissioning of the facility." In making its determination, the NRC would be required to consider:

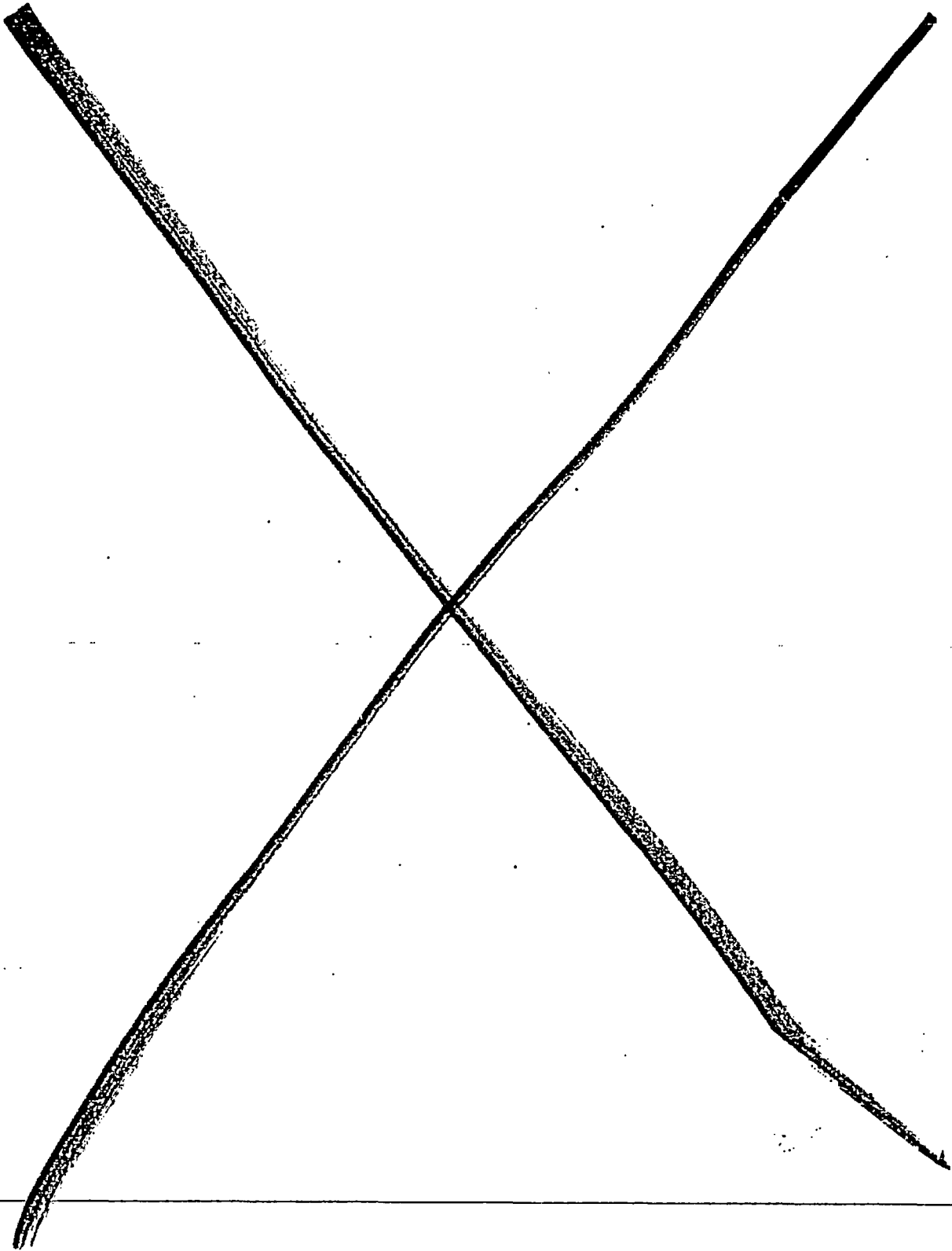
- (1) the current level of funds in the decommissioning trust;
- (2) the adequacy of the currently approved rates to recover the costs of the decommissioning obligation;
- (3) the assurance of continuing recovery of such costs through rates;
- (4) the timing of the recovery of such costs relative to the projected useful life of the plant; and
- (5) any other information that the NRC considers pertinent to its determination.

S. 1793 would also amend the Federal Power Act to permit an "electric utility that owns a nuclear power facility in whole or in part" to apply to the Federal Energy Regulatory Commission (FERC) or a state public utility commission (PUC), respectively, for an order approving rates to recover costs of decommissioning.¹ S. 1793 provides that the NRC's "nuclear decommissioning assurance determination" shall be "conclusive" in the FERC's approval of wholesale rates for decommissioning cost recovery and is to be given "due consideration" by PUCs in approving retail rates for decommissioning cost recovery. S. 1793 makes clear that its provisions permitting electric utilities that own nuclear facilities to apply to the FERC or a PUC for rate recovery of decommissioning costs come into play only "to the extent that" decommissioning costs would normally be recovered in connection with wholesale rates for transmission or sale of electricity or retail rates for distribution. See Section 5(a)(1) and (b). This indicates that the provisions pertaining to setting of decommissioning rates by the FERC or PUCs would not apply to non-regulated, generation-only nuclear utilities. While the bill contains no judicial review provisions pertaining to the NRC's nuclear decommissioning assurance determinations, it does provide for judicial review in the federal court of appeals and district courts, respectively, of any FERC or PUC failure to allow collection of decommissioning costs in rates necessary to assure adequate funding consistent with the NRC's determination.

EX. 5

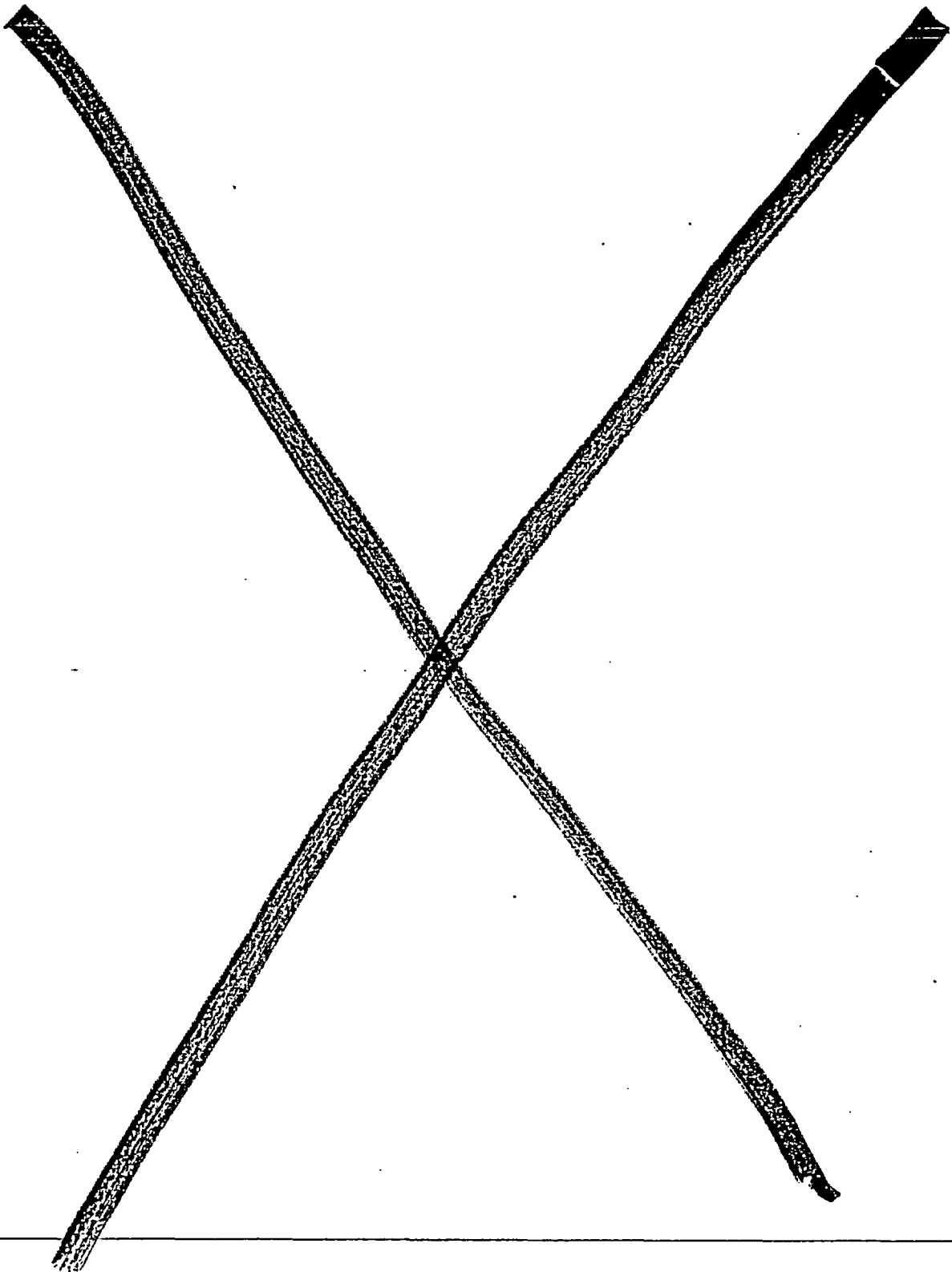
¹The Federal Power Act, 16 U.S.C. § 796(22), defines "electric utility" as meaning "any person or State agency which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency."

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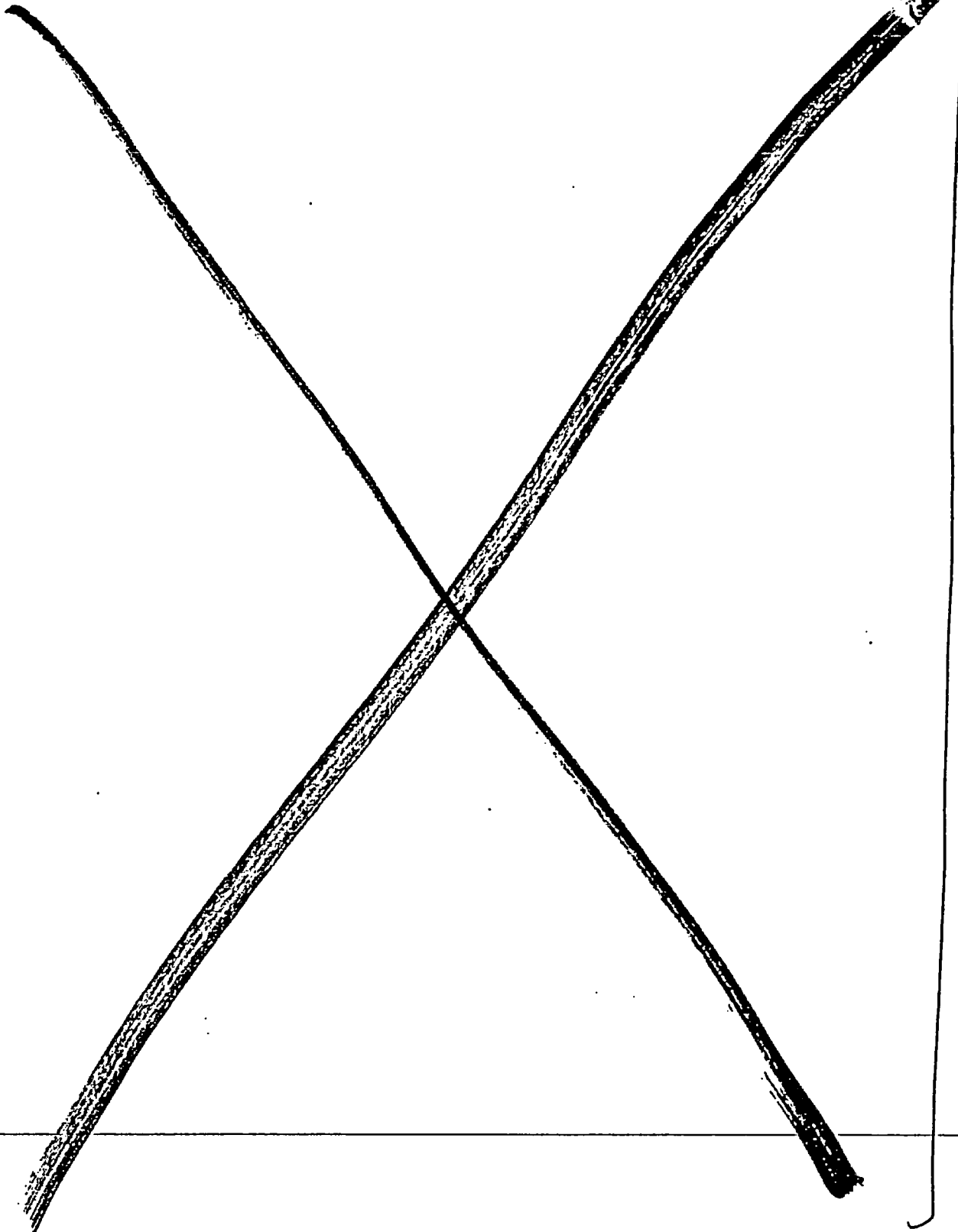
EX.5





EX. 5

EX. 5



[REDACTED]

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ex 5

SECY please track.
Attachment: S. 1793

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NRR
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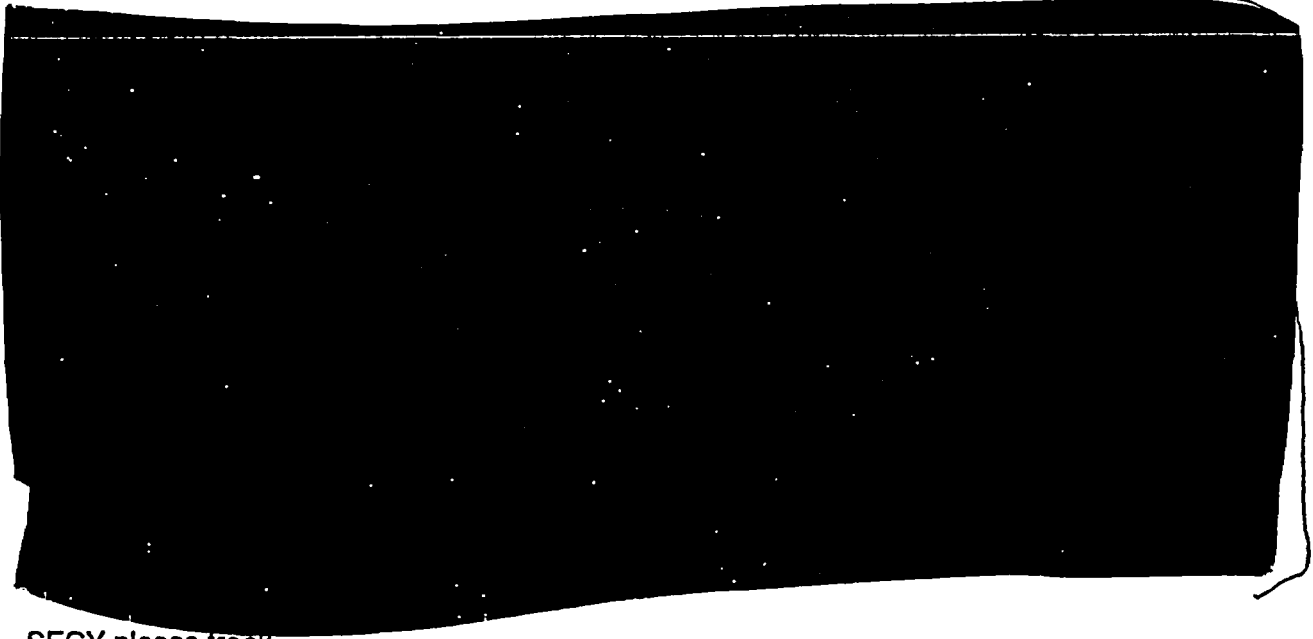
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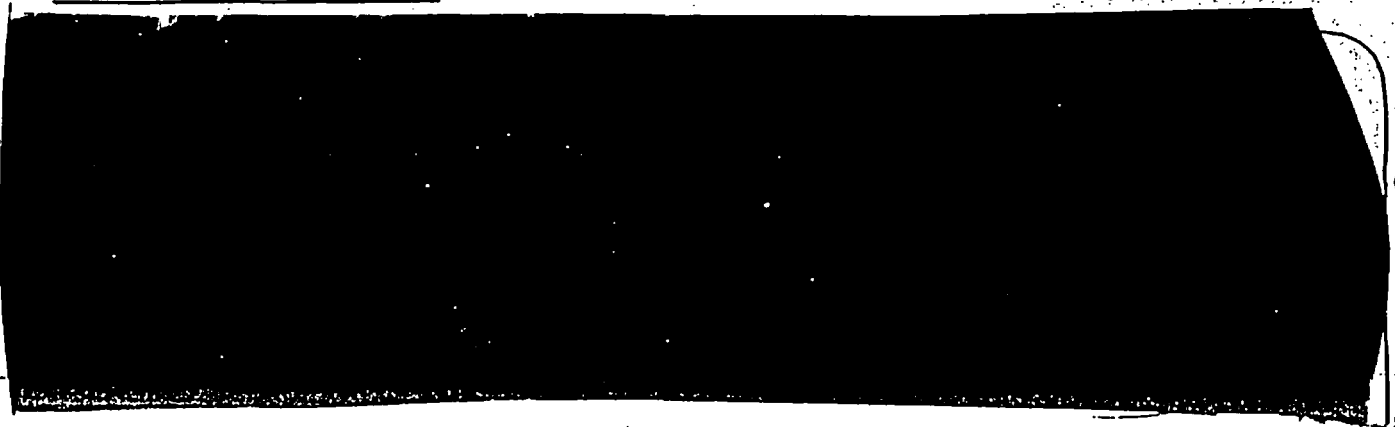


EXS

SECY please track.

Attachment: S. 1793

- cc: EDO
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EXS

**NOTE: ATTORNEY-CLIENT PRIVILEGE
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106TH CONGRESS
1ST SESSION

S. 1793

To ensure that there will be adequate funding for the decommissioning of nuclear power facilities.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1999

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To ensure that there will be adequate funding for the decommissioning of nuclear power facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Nuclear Decommis-
5 sioning Assurance Act of 1999".

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS. Congress finds that

8 (1) full, safe decommissioning of nuclear power
9 plants is a compelling Federal interest, in that

1 (A) the public health and safety and the
2 protection of the environment can be guaran-
3 teed only if nuclear power plants are adequately
4 decommissioned at the end of their useful lives;
5 and

6 (B) decommissioning obligations cannot be
7 avoided, abandoned, or mitigated, as a matter
8 of public health and safety;

9 (2) electric utilities that own nuclear power
10 plants must be able to collect adequate revenues to
11 ensure that the utilities can satisfy the obligation to
12 fully decommission nuclear power plants in accord-
13 ance with standards established by the Nuclear Reg-
14 ulatory Commission;

15 (3) the authority of the Nuclear Regulatory
16 Commission to ensure that utilities are able to col-
17 lect adequate funds so that they can satisfy the de-
18 commissioning obligation is limited by the fact that
19 the Commission does not directly establish rates for
20 electric services;

21 (4) many nuclear decommissioning trust funds
22 are not adequate to meet decommissioning obliga-
23 tions, and the current electric rates of collection are
24 not adequate to ensure that there will be adequate
25 funds at the time of decommissioning.

1 (5) potential restructuring of the electric utility
2 industry will exacerbate the problem, because com-
3 petitive pressure is expected to be placed on current
4 rates, thereby threatening the ability of utility enti-
5 ties to recover funds for decommissioning in electric
6 rates; and

7 (6) there is a Federal interest in establishing a
8 national policy to ensure that electric utilities that
9 own nuclear power plants can recover funds suffi-
10 cient to satisfy the decommissioning obligation.

11 (b) PURPOSES.⌘ The purposes of this Act are⌘

12 (1) to ensure that electric utilities that own
13 commercial nuclear electric generating plants will be
14 able to satisfy the obligation to decommission the
15 plants, as established by the Nuclear Regulatory
16 Commission; and

17 (2) to provide ratemaking bodies, including the
18 Federal Energy Regulatory Commission, with suffi-
19 cient authority to provide for recovery of funds for
20 decommissioning.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) DECOMMISSION.⌘ The term "decommis-
24 sion" has the meaning given the term in section

1 50.2 of title 10, Code of Federal Regulations (or any
2 successor regulation).

3 (2) DECOMMISSIONING OBLIGATION.Ⓓ The term
4 "decommissioning obligation" means the obligation
5 to pay costs associated with the measures necessary
6 to ensure the continued protection of the public from
7 the dangers of any residual radioactivity or other
8 hazards present at a facility when a nuclear unit is
9 decommissioned.

10 (3) NUCLEAR DECOMMISSIONING TRUST
11 FUND.Ⓓ The term "nuclear decommissioning trust
12 fund" has the meaning given the term "external
13 sinking fund" in section 50.75(e)(1)(ii) of title 10,
14 Code of Federal Regulations (or any successor regu-
15 lation).

16 (4) STATE COMMISSION.Ⓓ The term "State
17 commission" has the meaning given the term in sec-
18 tion 3 of the Federal Power Act (16 U.S.C. 796).

19 **SEC. 4. NUCLEAR DECOMMISSIONING ASSURANCE DETER-**
20 **MINATION BY THE NUCLEAR REGULATORY**
21 **COMMISSION.**

22 (a) PETITION.Ⓓ

23 (1) IN GENERAL.Ⓓ A licensee under part 50 of
24 title 10, Code of Federal Regulations may petition

1 the Nuclear Regulatory Commission for a deter-
2 mination of whether

3 (A) adequate amounts have been deposited
4 or are being deposited in the nuclear decommis-
5 sioning trust fund of the licensee; and

6 (B) the future funding for any nuclear
7 power plant owned in whole or in part by the
8 licensee is assured.

9 (2) CONTENTS. A petition under paragraph
10 (1) shall disclose

11 (A) the licensee's current minimum
12 amount established by the Nuclear Regulatory
13 Commission under section 50.75 of title 10,
14 Code of Federal Regulations for each facility
15 for which the licensee holds a license;

16 (B) the currently effective rates to recover
17 costs for decommissioning obligations as estab-
18 lished by the Commission or State commissions,
19 as appropriate;

20 (C) the amount that has been deposited in
21 the nuclear decommissioning trust fund;

22 (D) the planned rate and timing of collec-
23 tion of the costs of the decommissioning obliga-
24 tion through the projected useful life of the fa-
25 cility; and

1 (E) any other information pertinent to the
2 continuing assurance of funding of the nuclear
3 decommissioning trust fund.

4 (b) DETERMINATION.ⓓ Not later than 180 days of
5 receipt of a petition under paragraph (1), the Nuclear
6 Regulatory Commission shall issue a determination re-
7 garding whether the nuclear decommissioning trust fund
8 and the currently approved level of rates to recover the
9 costs of the decommissioning obligation are adequate to
10 ensure full and safe decommissioning of the facility.

11 (c) CONSIDERATIONS.ⓓ In making a determination
12 under subsection (b), the Nuclear Regulatory Commission
13 shall consider.ⓓ

14 (1) the current level of funds in the nuclear de-
15 commissioning trust fund;

16 (2) the adequacy of the currently approved
17 rates to recover the costs of the decommissioning ob-
18 ligation;

19 (3) the assurance of continuing recovery of such
20 costs through rates;

21 (4) the timing of the recovery of such costs rel-
22 ative to the projected useful life of the plant; and

23 (5) any other information that the Nuclear
24 Regulatory Commission considers pertinent to a de-

1 termination of the necessary assurance of adequate
2 funding.

3 (d) ADEQUACY OF MINIMUM AMOUNTS.⊘ Nothing in
4 this Act precludes the Nuclear Regulatory Commission
5 from revising or reconsidering the adequacy of the min-
6 imum amounts established under section 50.75(c) of title
7 10, Code of Federal Regulations.

8 (e) NOTICE.⊘ The Nuclear Regulatory Commission
9 shall issue notice of its finding to the licensee, the Federal
10 Energy Regulatory Commission, and any other party of
11 record.

12 **SEC. 5. AMENDMENT OF THE FEDERAL POWER ACT.**

13 (a) DECLARATION.⊘ Section 201 of the Federal
14 Power Act is amended by adding at the end the following:

15 "(h) DECLARATION REGARDING DECOMMISS-
16 SIONING.⊘ The decommissioning of nuclear power plants
17 licensed by the Commission is affected with a public inter-
18 est, and the Federal regulation of matters relating to de-
19 commissioning of nuclear power plants, to the extent pro-
20 vided in this part, is necessary in the public interest."

21 (b) NUCLEAR DECOMMISSIONING ASSURANCE.⊘ Part
22 II of the Federal Power Act (16 U.S.C. 824 et seq.) is
23 amended by adding at the end the following:

24 **"SEC. 215. NUCLEAR DECOMMISSIONING ASSURANCE.**

25 ~~"(a) COST RECOVERY IN WHOLESALE RATES.⊘~~

1 “(1) IN GENERAL.Ð To the extent that the
2 costs of a decommissioning obligation are recovered
3 in wholesale rates, an electric utility that owns a nu-
4 clear power facility in whole or in part may apply to
5 the Commission for an order approving rates and
6 charges in connection with the wholesale trans-
7 mission or sale of electricity to ensure collection of
8 revenues necessary to ensure that there will be ade-
9 quate funding to satisfy the decommissioning obliga-
10 tion of the electric utility in establishing rates and
11 charges.

12 “(2) NUCLEAR DECOMMISSIONING ASSURANCE
13 DETERMINATION.Ð In a proceeding under this sec-
14 tion, any nuclear decommissioning assurance deter-
15 mination made in a proceeding under section 4 of
16 the Nuclear Decommissioning Assurance Act of
17 1999 shall be conclusive.

18 “(3) DENIAL OF REQUEST.Ð If the Commis-
19 sion, by order or by failure to act with 180 days of
20 the filing of a petition, denies in whole or in part an
21 application under paragraph (1) or otherwise fails to
22 allow collection of costs in rates necessary to ensure
23 adequate funding under section 4 of the Nuclear De-
24 commissioning Assurance Act of 1999, the electric

1 utility may seek review of the action under section
2 313(b).

3 "(b) COST RECOVERY IN RETAIL RATES.Ð To the ex-
4 tent that the costs of the decommissioning obligation are
5 recovered in retail rates, in a proceeding before a State
6 commission initiated by an electric utility that owns a nu-
7 clear power plant in whole or in part for an order approv-
8 ing rates and charges in connection with the distribution
9 of electricity, any nuclear decommissioning assurance de-
10 termination made by the Commission under section 4 of
11 the Nuclear Decommissioning Assurance Act of 1999 shall
12 be given due consideration, so as to ensure collection of
13 revenues necessary to ensure adequate funding of the nu-
14 clear-owning utility's nuclear decommissioning obligations.

15 "(c) RATES, TERMS, AND CONDITIONS.Ð

16 "(1) IN GENERAL.Ð The Commission and the
17 State commissions shall establish rates, terms, and
18 conditions in response to an application under sub-
19 section (a) or (b) not later than 180 days after the
20 date of submission of the application.

21 "(2) FAILURE TO ACT.Ð For purposes of sec-
22 tion 313(b), failure of the Commission to comply
23 with paragraph (1) shall be considered a denial and
24 shall be appealable as a final agency action.

1 “(d) DENIAL OF REQUEST BY STATE COMMISSION.Ⓓ
2 Notwithstanding any other provision of law, if a State
3 commission, by order or by failure to act within 180 days
4 of the filing of a petition, denies in whole or in part the
5 request under subsection (b) or otherwise fails to allow
6 collection of costs in rates necessary to ensure adequate
7 funding under section 4(b) of the Nuclear Decommis-
8 sioning Assurance Act of 1999, the electric utility may
9 apply to the United States district court for an order re-
10 quiring the State commission to establish rates, terms,
11 and conditions necessary to ensure adequate funding
12 under section 4(b) of the Nuclear Decommissioning Assur-
13 ance Act of 1999.”.

○