



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 14, 1978

Milton J. Grossman, Esquire
Chief Hearing Counsel
Office of the Executive
Legal Director
Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Grossman:

I am writing in response to your letter of August 9, 1978 and several subsequent conversations with members of the staff regarding the public availability of certain financial information supplied to the Nuclear Regulatory Commission ("NRC") by Duke Power Company, Cleveland Electric Illuminating Company, and other applicants for nuclear facility construction permits and operating licenses (the "applicants").

The facts, as more fully detailed in your letter and enclosures, are as follows. Pursuant to section 182(a) of the Atomic Energy Act of 1954 and NRC rules and regulations, the NRC staff must determine the financial qualifications of applicants for nuclear facility construction permits. Accordingly, the NRC requests applicants to submit certain additional financial information which includes a projected source of funds statement over the relevant construction period, with underlying assumptions, showing how anticipated construction expenditures might be covered by internal and external financing sources. Your previous letter dated January 2, 1976 (Enclosure 1 with your August 9, 1978 letter) indicates that the NRC staff does not consider the sources of funds statement as a financial forecast, but rather looks to the statement for a demonstration of one possible way by which further construction projects, including the subject facility of the application, might reasonably be financed. Applicants generally have included a disclaimer on their sources of funds statements to the effect that they should not be considered forecasts.

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The NRC has a general policy of full public disclosure regarding any information submitted to or prepared by it that forms part of the basis of its regulatory decisions regarding nuclear reactors. You indicate that the applicants have requested the withholding from public availability of portions of their projected sources of funds statements over the period of construction. In support of these requests, the applicants have argued that (1) the federal securities laws as currently administered by this Commission prohibit or materially restrict the publication of projections and (2) if the NRC places these projections in the public domain, these applicants will have to comply with all duties and liabilities of making projections on a reasonable basis and keeping them up to date by proper public revision.

As you are aware, in Securities Act Release No. 5992, (copy enclosed) November 1, 1978, the Commission issued a statement generally encouraging companies to disclose projections both in their filings with the Commission and in general. To that end, the Commission also adopted revised guidelines for the disclosure of projections in Commission filings and proposed for comment a "safe-harbor" rule that would provide protection from the liability provisions of the federal securities laws for reasonably based projections that are disclosed in good faith.

In Release No. 5992, the Commission specifically noted that issuers have raised questions regarding their obligations under the federal securities laws with respect to projection information required to be submitted to other federal and state regulatory authorities. The Commission further stated that in its view, the submission of this type of information to federal or state regulatory authorities pursuant to their requirements under circumstances in which it would be publicly available would not in and of itself violate the federal securities laws or require issuers to make public projections in filings with the Commission or otherwise. The Commission also reminded issuers of their general obligation to assure that material facts concerning their financial condition are

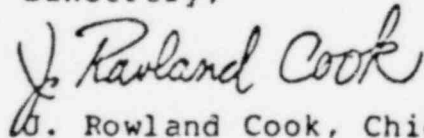
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promptly and fully disclosed and that information submitted does not become misleading by virtue of subsequent events. However, in this regard, it was suggested that issuers may wish to consider the appropriateness of clearly distinguishing such information from any projections already made, or clearly indicating that the information should not be considered as a projection for any purpose other than consideration by the requesting authority. It was also suggested that issuers may wish to consider the appropriateness of filing a report on the Commission's Form 8-K, in which the furnishing of this information could be disclosed and the purpose of its submission and nature of its use clarified.

Based upon the information presented in your letter, it is the opinion of this Division that submission of this information to the NRC by the applicants and subsequent release of it to the public would not contravene the requirements of this Commission. This opinion assumes that any projection information contained therein has a reasonable basis. Moreover, since the NRC does not regard this information as a financial forecast and applicants include a disclaimer to this effect with their submissions, this Division does not believe that the public availability of this information would impose on applicants a burden to publicly revise and update the material contained therein. However, to the extent that subsequent material facts regarding the financial condition of applicants would indicate that previously disclosed assessments no longer have a reasonable basis, full and prompt disclosure of these facts may be required.

Sincerely,



J. Rowland Cook, Chief
Office of Disclosure Policy
and Proceedings

Enclosure

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ENCLOSURE 3

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