

PROPOSED RULE MISC (90-9)
(55FR43231)
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

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DEC - 5 1990

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James M. Taylor
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Taylor:

This is in response to your letter to the Chairman of the Federal Energy Regulatory Commission of October 26, 1990. You asked the Chairman for comments on the NRC staff's proposed policy statement on Possible Safety Impacts of Economic Performance Incentives published in the Federal Register on October 26, 1990. The Chairman asked me to respond, as Acting Director of the Office of Electric Power Regulation.

I support the proposed draft policy statement because I share the belief that economic performance incentives should be designed to encourage both economical and safe operation. Relying on long-term performance measurements seems to be a good way to ensure that these goals do not conflict.

However, I would like to make some suggestions so that the policy statement better reflects how this Commission handles filings involving economic performance incentives. The Federal Energy Regulatory Commission does not have an economic performance incentive program either for commercial nuclear reactors, as stated in your letter, or for electric power plants in general as stated in the draft policy statement. The Commission acts on individual filings from utilities and considers economic performance incentive mechanisms on a case-by-case basis.

For example, in New England Power Pool, Opinion No. 342, 50 FERC ¶ 61,139 (1990), the Commission approved a performance incentive mechanism which adjusts each pool participant's capability responsibility (derived from both nuclear and non-nuclear generation, combined) by linking the generating unit performance assumed for planning purposes (called "target availabilities") to the performance actually achieved by each participant. If a participant's actual unit availabilities exceed the target availabilities, its capability responsibility will be reduced. However, if a participant's actual unit availabilities are less than the target availabilities, its capability responsibility will be increased and it will have to contribute additional

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capacity to the pool to mitigate the fact that its units are operating sub-par. To meet the higher capability responsibility the participant will have to provide generating capability to the pool to make up for the capacity reduction attributable to the above-target outage rates of its plants.

In another proceeding currently being litigated before an administrative law judge, Palisades Generating Company (Palisades Genco) is seeking authorization to implement rates which are hourly charges applied to the number of kilowatthours that the Palisades Nuclear Plant could produce per hour (i.e., capacity availability), but without regard to the amount of energy actually delivered. Palisades Genco seeks to charge a rate which reflects a return on equity above 15% if the plant's availability exceeds 55 percent or if its costs are lower than projected, Palisades Generating Company, 48 FERC ¶ 61,144 (1989).

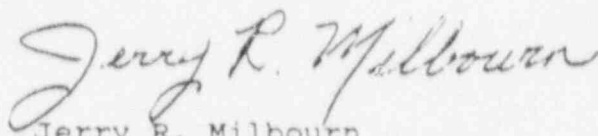
Finally, in a proceeding involving the construction and operation of the Ocean State Power combined cycle combustion generating unit, the Commission approved a performance incentive package which included: (1) a construction cost ceiling of \$625/kw; (2) provisions permitting the purchasers to withdraw from their agreements if significant construction delays occurred; (3) penalties if the unit failed to achieve 90 - 95 percent of its New England Power Pool design rating; and (4) provisions for additional payments to Ocean State whenever plant availability exceeds a certain level, and for reduced payments to Ocean State whenever plant availability falls below that level. Ocean State Power, 38 FERC ¶ 61,140 (1987).

The NRC can file a motion to intervene in a proceeding before this Commission, if it feels that the proposed economic performance incentive proposals might affect the safe operation of a nuclear generating facility, and may propose changes in the incentive provisions.

However, it is important to recognize that state regulators have a much larger say in approving rates with economic performance incentive provisions than FERC. This is because most nuclear plants are owned by utilities with retail service franchises and these retail rates are regulated at the state level. FERC has rate jurisdiction only when wholesale rates are at issue or when a nuclear plant is owned by an entity without a retail service franchise.

Thank you for providing us the opportunity to comment. I support the policy statement if modified to better reflect how FERC handles these economic performance incentive mechanisms in our ratemaking process.

Sincerely,

A handwritten signature in cursive script that reads "Jerry R. Milbourn".

Jerry R. Milbourn
Acting Director, Office of
Electric Power Regulation

cc: Secretary, U.S. Nuclear
Regulatory Commission
Washington, D.C. 20553
ATTN: Docketing and Services Branch