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Nuclear Information and Resource Service
1424 16th Street NW Suite 404
Washington DC 20036
Tel: 202-328-0002 Fax: 202-462-2183

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OFFICE OF THE
RULEMAKING AND
ADJUDICATIONS STAFF

November 24, 1997

The Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

CKET NUMBER
PROPOSED RULE PA 50
(62 FR 47588)

Attention: Docketing and Service Branch

By FAX Transmission: 301-415-1672

**NIRS Comments on NRC Proposed Rule On Financial Assurance Requirements for
Decommissioning Nuclear Power Reactors**

Dear Sir:

In response to the U.S. Nuclear Regulatory Commission's (NRC) proposed rule on the Financial Assurance Requirements for Decommissioning Nuclear Power Reactors as provided for public comment in the Federal Register September 10, 1997 (Volume 62, Number 175), Nuclear Information and Resource Service (NIRS) submits the following comments.

**I. LACK OF ENFORCEMENT OF CURRENT NRC REGULATIONS WITH REGARD TO
A NUCLEAR POWER STATION OWNER WHO DEFAULTS ON DECOMMISSIONING
FINANCE OBLIGATIONS SETS A BAD PRECEDENT FOR THE FUTURE**

As it pertains to the proposed rule as stated above, it is of major concern to NIRS that the NRC is issuing incremental exemptions from 10 CFR 50.75(e)(2) to Great Bay Power Corporation in response to the company's default on its decommissioning financial obligations for the partial ownership in the Seabrook nuclear power station.

Great Bay Power, formerly Eastern Utilities Associates Power Inc. (EUA) is a twelve percent (12%) joint owner in the Seabrook nuclear power generating station. Great Bay does not have a franchise area and therefore does not have a captive customer base. Great Bay has only been able to sell 10 megawatts in long term contracts of its approximately 150 megawatt share in Seabrook generating capacity. This has resulted in a shortfall in paying into the decommissioning fund. As a result Great Bay required increased scrutiny of the NRC. The NRC staff has concluded that the reorganized Great Bay Power did not meet the definition of an "electric utility" under 10 CFR 50.2. Because Great Bay did not meet the definition, the corporation is required to meet its share of its financial obligation for decommissioning Seabrook Station as a "non-electric utility" by immediately prepaying their share of the projected decommissioning costs. The corporation also has the option to secure a surety bond through a financial agent which

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will assure that their decommissioning obligation is covered. Since Seabrook's operation commenced in 1990, Great Bay has proved neither assurance.

The NRC has responded by providing the corporation with a series of incremental exemptions. The first one in February, 1997 was granted for six months with the proviso that Great Bay secure a bonding agent to cover their liability. Great Bay was unable to secure a surety in that time frame. Great Bay then requested a 5 year exemption and NRC responded by granting an additional exemption for one year with the proviso that the company seek financial options.

Should Seabrook Station shut down early as the result of economic pressure or by some accidental event, there will be an inadequacy in the decommissioning funds as a result of Great Bay Corporation's shortfall alone.

In a letter dated October 20, 1997 from the NRC Commission Chair, Dr. Shirley Ann Jackson responded to Attorney Robert Backus, NIRS Board Member, that the incremental exemptions do not set precedent for offering "financial succor" to future utilities that might experience adverse effects of increased competition arising out of economic deregulation. NRC staff was merely providing Great Bay with additional time to meet the NRC's requirements and that such an exemption is based on the merits of the Great Bay exemption alone. Further, NRC does not believe the current default situation constitutes a crisis.

NIRS responds that ever since the commercial operating license for Seabrook was issued in July, 1990, Great Bay Power (formerly EUA before reorganization from bankruptcy) has demonstrated historical financial problems which have culminated into the current crisis with regard to decommissioning financial responsibility. Combined with the fact that the other co-owners in Seabrook have expressed their refusal to either come to the aid of the Great Bay or any sense of responsibility for the emerging default, NIRS believes to be evidence indicating that a crisis situation already exists.

NIRS believes this series of incremental exemptions to be an abandonment of NRC staff's role to enforce of federal regulations requiring nuclear power station owners to meet their financial obligation in order to protect the public from underfunded and therefore inadequate decommissioning activities. Therefore, NIRS has grave concerns regarding the current effort by NRC to amend any of its requirements if in fact it means that the agency will not seriously enforce the outcome.

Therefore:

- 1) NIRS finds that the NRC proposed rule change does not adequately address the need for shared responsibility of a nuclear power station's joint owners to cover a co-owner's default of its decommissioning financial obligations. While the NRC has recently articulated that the agency reserves the right to impose joint and several liability "in highly unusual circumstances where adequate protection of public health and safety would be compromised," NIRS is concerned by such vague policy and language referenced by NRC as it pertains the assurance of the availability of adequate funds to protect the public health and safety. This was the intent of specifying the different requirements for an "electric utility" and a "non-electric utility" for setting aside adequate funds. A specific requirement for joint coverage is the logical mechanism to provide the needed

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additional assurance that the public health and safety will be prioritized by the availability of adequate funds for the decommissioning. Since the construction, operation and maintenance of the nuclear power station is a jointly shared responsibility of all of the owners, it is common sense that the reactor's decommissioning should be a jointly held responsibility for all the owners in the event of any one owner's default. To do otherwise would only represent an effort on the part of the regulator to shield the economic interests of the other joint owners rather than to live up to the agency's regulatory mandate to protect public health and safety.

2) NIRS finds that the NRC reluctance to adequately address the issues raised by the Great Bay default on its decommissioning liability and the example which it provides for a lack of any requirement for joint owner liability of a co-owner's default to be a regulatory obfuscation of an emerging issue pertaining to utility default on the adequate provision of decommissioning funds.

NIRS believes that the advent of electric utility restructuring will exacerbate problems to secure decommissioning financial assurance as more and more co-owners in nuclear power stations face increased competition. NRC needs to establish strict enforcement standards as a regulator with the nuclear power industry as it pertains to the emerging issue of default on decommissioning fund liabilities.

II. CHANGING THE DEFINITION OF AN ELECTRIC UTILITY

The Commission notes that the main component in revising its definition of an "electric utility" is a licensee's rates being established either through a cost-of-service mechanism or through other non-bypassable charge mechanisms, such as wire charges, non-bypassable customer fees, including securitization or exit fees, by rate regulation authority.

NIRS does not support the inclusion of any mechanisms which provide for a stranded cost bailout of the nuclear industry. Bad managerial decisions made over the past decades resulting in the phenomenal cost overruns and time to completion of many of these nuclear power stations should not be rewarded by a corporate welfare program. Other industries, such as in telecommunications, did not receive a bailout for their losses after restructuring, therefore, neither should the nuclear industry. Such a bailout would destroy real competition, inhibit employment gains, and the economic growth of more viable cost effective and less polluting power generating technologies. A bailout of the nuclear industry would also further damage the environment by allowing nuclear power stations that might otherwise shutdown to continue operation.

III. REPORTING REQUIREMENTS

The Commission is proposing that each license submit an initial decommission finance status report nine months after the effective date of the rule and a minimum of a two year reporting requirement with an additional annual filing requirement when the licensee comes within 5 years of closure. Given a number of reputable electric utility investment firms have the projected a broad range of numbers for early closures nuclear facilities in the United States and the rapidly accelerating cost projections for nuclear decommissioning operations, NIRS feels it would be prudent for NRC to require annual filings from all station co-owners as an appropriate measure to address these uncertainties as they potentially impact public health and safety.

IV. TIMING OF THE RULEMAKING

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NIRS believes the rulemaking to be timely given the example provided by the Great Bay default of its decommissioning obligation. Therefore, an appropriate rulemaking is necessary and timely.

Sincerely,
Paul Gunter, Director
Reactor Watchdog Project