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November 24, 1997

Secretary, Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: **Comments on Proposed Rule "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors"**

Dear Sir:

As provided for by Federal Register notice of September 10, 1997 (62 Fed. Reg. 47,588), Great Bay Power Corporation ("Great Bay") is submitting these written comments on the Nuclear Regulatory Commission's ("NRC") proposed rule concerning "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors." Among other things, the proposed rule would revise the NRC's regulatory definition of electric utility found in 10 C.F.R. § 50.2 with direct implications for the decommissioning financial assurance requirements applicable to entities no longer considered to be electric utilities under the revised definition. Such entities would be required under the proposed rule to provide decommissioning funding assurance in accordance with the requirements for non-electric utilities set forth in 10 C.F.R. § 50.75(e)(2), which could in the extreme require, as a practical matter, up-front funding of the total expected decommissioning costs.

Great Bay would be directly affected by the proposed rule, if it were adopted as proposed. Great Bay has always believed and continues to believe that it is an electric utility under the NRC's current definition of electric utility, and, until recently, the NRC Staff had agreed. Under the proposed regulation, Great Bay and similarly situated electric utilities would now, for the first time, be required to comply with the decommissioning funding assurance requirements for non-electric utilities set forth in 10 C.F.R. § 50.75(e)(2), which the NRC itself recognizes are burdensome. Indeed, the NRC has expressly acknowledged that the financial assurance mechanisms set forth in 10 C.F.R. § 50.75(e)(2) through which non-electric utilities are required to demonstrate reasonable assurance of decommissioning

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funding may be unavailable. Great Bay has experienced first-hand the difficulty in attempting to obtain decommissioning funding assurance in accordance with the requirements of 10 C.F.R. § 50.75(e)(2) and, to date, it has been unable to do so.

This predicament, in which Great Bay and similarly situated currently licensed electric utilities would find themselves as a result of the proposed rule, raises serious questions of both law and public policy. The application of 10 C.F.R. § 50.75(e)(2) to currently licensed entities, once considered but no longer viewed as electric utilities, could directly or indirectly result in the premature shutdown of nuclear plants and bring about the very result that the Commission seeks to avoid, i.e., a nuclear power plant that is prematurely shut down with insufficient funds set aside to pay for its decommissioning. Such a result would be unsound as a matter of public policy. Moreover, for the Commission to require existing licensees to provide financial assurance through mechanisms it knows are unavailable, thereby causing premature plant shutdowns, would be arbitrary and capricious agency action under the Administrative Procedure Act.

Great Bay recognizes that the NRC has a legitimate public health and safety function in ensuring licensees continue to provide reasonable assurance of adequate decommissioning funding as the electric utility industry restructures. However, the Commission's rules should retain flexibility for the provision of such assurance and should not require immediate decommissioning funding up-front for currently licensed entities that would no longer qualify as an electric utility, which could, as a practical matter, be the result under the proposed rule. It is unfair to require up-front decommissioning funding for existing licensees, such as Great Bay, who have proceeded under the NRC-authorized presumption that they could set aside funds for decommissioning on an annual basis over the life of the plant. Moreover, there is the practical matter of whether existing licensees -- never having contemplated or planned for up-front funding -- could provide such funding. Thus, both as a matter of fairness and to avoid triggering the very result that the Commission seeks to avoid, as well as avoiding agency action that would be declared arbitrary and capricious, such entities should be allowed a reasonable extended period of time to provide adequate assurance of decommissioning funding.

The Commission in the Statement of Considerations to the proposed rule expressly recognized the dilemma that would be faced by licensees no longer considered to be electric utilities under the proposed rule and requested comments on

allowing such entities to partially accelerate their payment of decommissioning funds into a sinking account instead of requiring a surety or a similar up-front guarantee. Great Bay supports such an approach provided a sufficient period of time is allowed for the accelerated payment of decommissioning funds to the sinking account. Further, the Commission should amend its decommissioning financial assurance requirements for non-electric utilities to allow greater flexibility in the alternatives that could be used by such entities to provide financial assurance. For example, individual states may undertake initiatives not expressly contemplated by the NRC rules that ensure adequate decommissioning funding for nuclear power plants within their states. New Hampshire is currently considering such initiatives with respect to Seabrook. Any rule promulgated by the NRC should retain sufficient flexibility to allow such state initiatives or similar initiatives by individual licensees to satisfy the NRC's financial assurance requirements for decommissioning funding. As the Commission has recognized, those requirements call for "'*reasonable assurance* of funds for decommissioning,' not an absolute guarantee of such funds."[1/]

Great Bay elaborates further on these points below. In Part I, Great Bay discusses in greater detail why it believes that the proposed rule should not be adopted as presently crafted. In Part II, Great Bay discusses potential changes to the proposed rule which could both ameliorate its concerns while providing reasonable assurance of adequate decommissioning funding.

I. The Commission Should Not Adopt The Proposed Rule As Drafted

A. Regulatory And Factual Background

The nuclear plants currently operating in the United States were financed and constructed by the electric utility industry. Although the NRC required electric utilities to establish their financial qualifications to construct their plants, since the 1984 amendment of the financial qualifications rule, the NRC has presumed that entities falling within its regulatory definition of electric utility are financially qualified to operate and maintain their plants.

[1/] Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI-96-7, 43 N.R.C. 235, 262 (1996) (emphasis in original).

Further, until the promulgation of its decommissioning rules in 1988, the NRC did not require its licensees, whether considered to be electric utilities or not, to set aside monies for the decommissioning of their nuclear power plants. The initial NRC financial qualification rules (prior to the adoption of the 1984 amendments) required applicants for an operating license, including electric utilities, to demonstrate:

> reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition.

10 C.F.R. § 50.33(f)(2) (1980). In addition, 10 C.F.R. § 50.82 ("Applications for termination of licenses") provided that a licensee could submit an application "to surrender a license voluntarily and to dismantle the facility and dispose of its component parts." 10 C.F.R. § 50.82(a) (1980). The Commission could require

> information as to proposed procedures for the disposal of radioactive material, decontamination of the site, and other procedures, to provide reasonable assurance that the dismantling of the facility and disposal of the component parts . . will not be inimical to the common defense and security or to the health and safety of the public.

Id. Upon such a showing, the Commission could "issue an order authorizing such dismantling and disposal, and providing for the termination of the license upon completion." 10 C.F.R. § 50.82(b) (1980).

Thus, as acknowledged by the NRC in NUREG-0436, its regulations addressed decommissioning "in only a limited way."[2/] In particular, its financial qualification provisions only addressed the "financial qualifications of prospective licensees," did not require licensees to set aside monies for decommissioning, and did not even "speak directly to final disposition of the facility, but only of shutting

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[2/] NUREG-0436, Rev. 1, "Plan for Reevaluation of NRC Policy on Decommissioning of Nuclear Facilities" at 3 (Dec. 1978).

down and maintaining it in a safe condition."[3] As reflected in NUREG 0584, the Commission assumed "in evaluating the financial qualifications of reactor licensees that if an applicant for a reactor operating license [were] financially qualified to construct or operate a nuclear facility, it [was] also qualified to shut [the facility] down" and decommission it.[4]

In 1977, the Public Interest Research Group ("PIRG"), and others, requested the Commission to initiate rulemaking to promulgate regulations for nuclear power plant decommissioning. The petitioners sought the promulgation of regulations that would require licensees "to post bonds to be held in escrow, prior to each plant's operations, to ensure that funds [would] be available for proper and adequate isolation of radioactive material upon each plant's decommissioning."[5] The petitioners argued that this arrangement would "ensure that the cost of decommissioning is paid for by current beneficiaries and not by future generations."[6]

The Commission did not adopt the regulatory approach proposed by the petitioners. Rather, it promulgated regulations that allowed electric utilities to provide financial assurance for decommissioning by setting aside funds on a periodic basis into external sinking funds dedicated to covering plant decommissioning costs.[7] In adopting this approach, the NRC expressly rejected the posting of surety bonds as sought by PIRG and others because the NRC found upon review that "surety bonds were not generally available in the amounts necessary for decommissioning power reactors."[8]

The NRC's finding was based on inquiries to the ten largest bonding companies on "whether surety bonds in the amount of $50 million for a term of 40 years

[3] Id. at 4.

[4] NUREG-0584, Rev. 3, "Assuring the Availability of Funds for Decommissioning Nuclear Facilities" at 2 (March 1983) (hereinafter NUREG-0584).

[5] 43 Fed. Reg. 10,370, 10,371 (1978) (Advance Notice of Proposed Rulemaking) ("Decommissioning Criteria for Nuclear Facilities").

[6] Id.

[7] 53 Fed. Reg. 24,018 (1988) (Final rule) ("General Requirements for Decommissioning Nuclear Facilities"); see also 50 Fed. Reg. 5,600 (1985) (Proposed rule) ("Decommissioning Criteria for Nuclear Facilities").

[8] 53 Fed. Reg. at 24,034 (citing NUREG-0584).

would be available, and if so, what would be their cost."[9/] The unanimous response of all the companies was that such "bonds would not be available in that large an amount for that long a term."[10/] Accordingly, the NRC adopted rules which allowed its electric utility licensees to provide financial assurance for decommissioning funding through external sinking funds, which to date has been the usual and accepted method for nuclear power plant licensees to provide decommissioning funding assurance. 10 C.F.R. § 50.75(e)(3).

The decommissioning regulations promulgated by the NRC in 1988 also included 10 C.F.R. § 50.75(e)(2) which requires non-electric utility licensees to provide decommissioning funding assurance either through surety bonds or similar third party guarantees, or by prepayment, or by self or parent guarantees. Historically, however, the NRC's reactor power licensees have been deemed to be electric utilities falling within the current definition set forth in 10 C.F.R. § 50.2. Indeed, the draft regulatory impact analysis accompanying the proposed rule states such is still the NRC's current belief as follows:

> NRC believes that, at this time, all power reactor licensees meet the current definition of electric utility.[11/]

In this regard, as set forth in Great Bay's October 20, 1997 letter to Chairman Jackson, both Great Bay and its predecessor, EUA Power Corporation ("EUA Power"), were considered and treated as electric utilities for over a decade -- from 1986 to January 1997 -- even though the NRC was fully aware that both Great Bay

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9/ NUREG-0584 at 36-37.

10/ Id. at 37 (emphasis in original).

11/ "Regulatory Analysis on Decommissioning Financial Assurance Implementation Requirements for Nuclear Power Reactors," Draft Report for Comment at 44 (1997) (emphasis added) (hereinafter "Draft Regulatory Impact Analysis"). Great Bay notes that this statement is inconsistent with the NRC's treatment of Great Bay beginning with the issuance of its January 22, 1997 exemption order and its subsequent exemption order of July 23, 1997. See Exemption Order, North Atlantic Energy Service Corporation and Great Bay Power Corporation (Seabrook Station Unit No. 1), Docket No. 50-443 (Jan. 22 1997) (hereinafter "January 22, 1997 Exemption Order"); Exemption Order, North Atlantic Energy Service Corporation and Great Bay Power Corporation (Seabrook Station Unit No. 1) Docket No. 50-443 (July 23 1997) (hereinafter "July 23, 1997 Exemption Order").

and EUA Power sold power at wholesale at market based rates established under the jurisdiction of the Federal Energy Regulatory Commission ("FERC").[12/]

Under the NRC's proposed rule, however, restructured entities such as Great Bay would no longer be electric utilities. Therefore, they would be faced with providing decommissioning assurance funding under 10 C.F.R. § 50.75(e)(2). However, the only mechanism provided for in 10 C.F.R. § 50.75(e)(2) conceivably available to Great Bay and similarly situated licensees are surety bonds or similar third-party guarantees which the NRC correctly found were not reasonably available alternatives in promulgating its existing decommissioning regulations.[13/]

Indeed, the NRC acknowledges that surety type mechanisms under 10 C.F.R. § 50.75(e)(2) may not be available to licensees who would no longer be considered electric utilities under the NRC's proposed rule. In Section 3.2.4 of the draft regulatory impact analysis -- which addresses the impacts of the proposed rule on licensees that "are no longer defined as 'electric utilities'" -- the NRC notes the difficulty entailed in obtaining a surety and other third party guarantees as follows:

> There are likely to be limits on the availability of surety bonds and other third-party guarantee financial mechanisms, such as letters of credit and lines of credit, to nuclear reactor licensees that are required to obtain

[12/] Letter to Chairman Jackson of the NRC from Gerald Charnoff, counsel for Great Bay dated October 20, 1997 (hereinafter "October 20, 1997 Great Bay Letter"). Thus, until the NRC Staff's issuance of its January 22, 1997 Exemption Order with respect to Great Bay, the NRC Staff had never viewed one of its nuclear power plant licensees as falling outside the regulatory definition of electric utility and subject to the requirements of 10 C.F.R. § 50.75(e)(2). As set forth in Great Bay's pleadings and other communications with the NRC, Great Bay believes that the NRC Staff's determination is wrong and that it is an "electric utility" as that term is defined in 10 C.F.R. § 50.2. See October 20, 1997 Great Bay Letter; Letter to Samuel J. Collins, Director of Office of Nuclear Reactor Regulation, from Gerald Charnoff, counsel for Great Bay dated August 11, 1997; Petition Of Great Bay Power Corporation For Partial Reconsideration Of Exemption Order, dated February 21, 1997; Supplement to Great Bay Power Corporation's Petition for Partial Reconsideration of Exemption Order to Submit Requested Cost Data and to Request, in the Alternative, a Further Exemption, dated June 4, 1997.

[13/] Great Bay does not have sufficient funds to prepay its decommissioning funding obligation nor does it satisfy the requirements for parent or self-guarantee of its decommissioning funding obligation set forth in 10 C.F.R. § 50.75(e)(2).

> such mechanisms to demonstrate financial assurance for the difference between their external sinking funds and the full amount of required assurance if the licensee no longer qualifies as an "electric utility." These limits may be created by the possibility, on the one hand, that the nuclear reactor licensees will no longer have recourse to the asset base of the utility, and that, on the other hand, providers of such financial mechanisms will require high levels of collateral and security before they will make such mechanisms available.
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> [T]he providers of financial mechanisms such as surety bonds and letters of credit have frequently required collateral for a portion or the full amount of the mechanism, and there is no reason to expect that they will relax this requirement for mechanisms assuring the very large decommissioning costs of nuclear generating facilities. Generating [companies] without access to substantial assets may find it difficult to provide the necessary collateral.[15/]

Similarly, in the Statement of Considerations, the Commission expressly recognizes that surety bonds and other financial assurance mechanisms allowed non-electric utilities under 10 C.F.R. § 50.75(e)(2) "may not be available to some licensees." 62 Fed. Reg. at 47,596.

Great Bay's recent experience in attempting to obtain a surety, as required by the exemption orders, confirms the difficulty alluded to above by the NRC in obtaining such third-party guarantees. Great Bay has met, and is continuing to meet, with various insurance and bonding entities in an attempt to obtain a surety bond or other third-party guarantee for its outstanding decommissioning funding obligation. However, so far the only terms under which Great Bay could obtain such a third-party guarantee would require it to fully fund or collateralize the insurer for the entire decommissioning obligation. As observed by the NRC Staff in

[15/] Draft Regulatory Impact Analysis at 32-33 (emphasis added).

the July 23, 1997 Exemption Order, such terms "would make it difficult, if not impossible, for Great Bay to meet its day-to-day obligations." Thus, although Great Bay is continuing its efforts to obtain a surety or similar third-party guarantee, to date its efforts have been unsuccessful.

B. The Proposed Rule As Currently Drafted Is Unsound Both As A Matter Of Policy And As A Matter Of Law

The above discussion of the regulatory and factual background establishes three salient points. These are:

- First, the NRC has found, and continues to believe, that surety bonds and similar third-party guarantees are not reasonably available to reactor power licensees for providing decommissioning funding assurance. The difficulty in obtaining such third-party guarantees is confirmed by Great Bay's ongoing efforts to obtain a surety or similar third-party guarantee.

- Second, as a result, the NRC has never sought to require existing licensees (until recently Great Bay) to obtain a surety or similar third-party guarantees in order to provide the necessary financial assurance for decommissioning funding. Rather, historically, the NRC has always considered its existing licensees (including until recently Great Bay) to be electric utilities for whom the NRC did not require the obtaining of a surety in part because of its unavailability and high costs.

- Third, as the Commission has observed, none of the financial assurance mechanisms provided for by 10 C.F.R. § 50.75(e)(2) may be reasonably available to some existing licensees, such as Great Bay, who would be considered non-electric utilities under the proposed rule and thus subject to the financial assurance requirements of 10 C.F.R. § 50.75(e)(2). Such existing licensees were licensed by the NRC without requiring such surety, or similar guarantees, or up-front funding and thus they never contemplated or planned their business ventures to be able to accommodate and to meet such requirements. Indeed, such requirements would have likely caused entities, such as Great Bay and its predecessor,

EUA Power, not to have filed a license application or transfer application with the NRC in the first place.[15/]

In these circumstances, the Commission's adoption of the proposed rule as it is currently drafted would be unsound both as a matter of policy and as a matter of law. As a matter of fundamental fairness, it would be unfair for the NRC to require a surety or analogous up-front decommissioning funding for existing licensees, such as Great Bay, who relied upon the presumption that they could set aside funds for decommissioning on an annual basis over the life of the plant. The proposed rule imposes major new requirements on those existing licensees no longer classified as electric utilities that were not in existence at the time of licensing. Further, there is the practical matter of whether existing licensees -- never having contemplated or planned for up-front funding -- could provide such funding, and even assuming that they could, whether they would be able to remain in business. As recognized by the NRC, Great Bay could not do so.

Thus, the proposed rule as drafted could place current reactor licensees who would no longer be classified as electric utilities in a difficult if not an impossible situation. As the NRC has recognized in both the Statement of Considerations and the Draft Regulatory Impact Analysis, the required financial assurance mechanisms for non-electric utilities provided for by 10 C.F.R. § 50.75(e)(2) may not be available to some licensees. Accordingly, strict and literal application of the requirements of 10 C.F.R. § 50.75(e)(2) to existing licensees, such as Great Bay, once considered but no longer classified as electric utilities, could result in the shutting down of nuclear plants with decommissioning funding not fully assured -- the very result which the Commission seeks to avoid with the proposed rule. Such a result would be contrary to the public health and safety mandate and policies underlying the Atomic Energy Act. Therefore, both as a matter of fundamental fairness and to

[15/] Applying the current requirements of 10 C.F.R. § 50.75(e)(2) to a new licensee would not result in such inequities, for the new licensee's owners could factor such requirements into their determination of the economic viability of the business venture before undertaking the venture. With respect to Great Bay, the new shareholders in 1994 provided additional capital and undertook an ownership role in Great Bay in reliance on the NRC's approval of the transfer, which treated Great Bay as an electric utility and did not require a surety or similar guarantee or up-front funding for Great Bay's decommissioning obligation. See October 20, 1997 Great Bay Letter.

avoid triggering the very result that the Commission seeks to avoid, the proposed rule should not be promulgated as currently drafted.

Moreover, such a result would most likely be deemed arbitrary and capricious agency action. Under the arbitrary and capricious standard, which would be applicable if the proposed rules were adopted, an agency must consider the relevant factors, examine the relevant data and information, and articulate a rational connection between the facts found and the choice made. See, e.g., Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins., 463 U.S. 29, 43-44 (1983); New England Coalition on Nuclear Pollution v. NRC, 727 F.2d 1127, 1130-31 (D.C. Cir. 1984).

Here, if the proposed rule were adopted as it is currently written, existing licensees, such as Great Bay, who were previously considered but would no longer be classified as electric utilities, would be required to demonstrate reasonable assurance of decommissioning funding through use of one of the financial assurance mechanisms set forth in 10 C.F.R. § 50.75(e)(2). However, the Commission itself has acknowledged that these mechanisms "may not be available to some licensees." 62 Fed. Reg. at 47,596. For the NRC to order action that it knows is not possible would be arbitrary and capricious. The net result would be the shutting down of nuclear plants with decommissioning funding not fully assured -- the very result the Commission purportedly seeks to avoid by promulgating the rule. Thus, there is no rational connection between the facts as found by the Commission and the implementation of the rule as drafted, and the rule would be subject to being struck down on grounds of being arbitrary and capricious agency action.

In short, the NRC should not adopt the rule as currently drafted because it would leave existing licensees, who no longer would be deemed electric utilities, in an untenable position that would be unsound as a matter of policy as well as a matter of law.

II. Proposed Changes To Draft Rule For Entities Which No Longer Would Be Considered Electric Utilities

The Commission in the Statement of Considerations to the proposed rule recognizes the dilemma faced by licensees that would no longer be classified as electric utilities. It acknowledges and expresses concern that the financial assurance

mechanisms provided for by 10 C.F.R. § 50.75(e)(2) may not be available to some licensees no longer classified as electric utilities and it requests comments on alternative methods of financial assurance for such entities, such as allowing them to accelerate their payment of decommissioning funds into an external sinking account. 62 Fed. Reg. at 47,596.

Great Bay strongly supports the Commission's initiative for developing, as part of this rulemaking, alternatives to the financial assurance mechanism currently provided for non-electric utilities under 10 C.F.R. § 50.75(e)(2). Additionally, Great Bay believes that 10 C.F.R. § 50.75(e)(2) should generally be amended to be made more flexible in order to take into account that individual licensees or states may develop satisfactory decommissioning funding assurance mechanisms that do not fall within the categories of mechanisms provided for by the regulation.

A. Alternative Financial Assurance Mechanisms

Great Bay believes that the accelerated payment of decommissioning funds into an external sinking fund could be a viable financial assurance mechanism for non-electric utilities provided a sufficient period of time is allowed for the accelerated payment of funds into the sinking account. Currently, electric utilities must make periodic payments into the sinking fund such that the total amount of the funds in the sinking fund at the time termination of operation is expected -- the end of the 40-year operating license -- are sufficient to pay decommissioning costs. See 10 C.F.R. § 50.75(e)(1). If the time frame for the accelerated payments for non-electric utilities is too short, the large accelerated payments will put the non-electric utility at a significant competitive disadvantage in the deregulated generation market compared to an electric utility which can both spread decommissioning payments out over the 40-year operating license time frame and recover those funds from sources other than its sales of electricity in the deregulated market. The Commission should therefore recognize that to accelerate significantly decommissioning funding payments by non-electric utilities would greatly exacerbate the competitive disadvantage that such non-electric utilities will already face in the deregulated market. This in turn could potentially cause the insolvency of non-electric utility licensees and possibly early closure of a plant and thus create the very result the Commission seeks to avoid.

The Commission's Statement of Considerations suggested the possibility of accelerating payments into a sinking fund over a ten year period. This would be far too short and would create a non-level playing field with all the advantages to "electric utilities," and in a non-regulated market, make it difficult for utilities such as Great Bay to compete. An accelerated payment alternative would be helpful but only if it is extended over a period of time approaching the end of the licensed period.

B. The Commission Should Amend 10 C.F.R. § 50.75(e)(2) To Allow The Use Of Financial Assurance Mechanisms Other Than Those Set Forth In The Regulation To Provide Reasonable Assurance Of Decommissioning Funding

Finally, the Commission should amend 10 C.F.R. § 50.75(e)(2) to allow the use of financial assurance mechanisms other than those specifically authorized by the regulation. As a practical matter, as the electric utility industry restructures, individual states are likely to develop various different mechanisms or means for assuring the funding of decommissioning costs for nuclear power plants located within their borders. States have just as great an interest as does the NRC in assuring adequate funding for the decommissioning of nuclear plants within their borders. In this regard, New Hampshire is currently undertaking a review to ensure that decommissioning funding will be available for the Seabrook plant. Further, individual licensees may develop singly or jointly different methods for assuring the funding of decommissioning costs for particular nuclear plants.

Thus, the NRC's decommissioning regulations should be flexible enough to allow the use of any financial assurance mechanisms developed by individual states or licensees which provide reasonable assurance of the adequate funding for nuclear power plant decommissioning. Specifically, Great Bay urges the Commission to amend 10 C.F.R. § 50.75(e)(2) to include a new subsection which provides as follows:

> (2) For a licensee other than an electric utility, acceptable methods of providing financial assurance for decommissioning are --
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> * * * * * * *

(v) Any other method or methods that provides reasonable assurance that adequate funds will be available to decommission the nuclear facility.

CONCLUSION

Great Bay appreciates the opportunity to provide comments on the proposed rule. For the reasons expressed in these comments, Great Bay believes that the rule should not be adopted as it is currently drafted because, as the Commission recognizes, it could place licensees that would no longer be classified as electric utilities in an untenable position in which they could not provide reasonable assurance of decommissioning funding as required by the NRC's regulations. For the NRC to order action that it knows is not possible would be arbitrary and capricious agency action subject to being struck down under the Administrative Procedure Act. Instead, the Commission should allow existing licensees that would no longer be classified as electric utilities, such as Great Bay, a reasonable time in which to make accelerated payments to an external sinking fund, and further, the Commission should modify its regulation for non-electric utilities to provide generally greater flexibility in the methods available to such licensees for providing reasonable assurance that adequate funds will be available to decommission their nuclear facilities.

Sincerely,

Gerald Charnoff
Paul A. Gaukler
Counsel for
Great Bay Power Corporation

cc: Dr. Shirley Ann Jackson, Chairman
Office of the Chairman

Nils J. Diaz, Commissioner
Office of the Commissioners

Greta J. Dicus, Commissioner
Office of the Commissioners

Edward McGaffigan, Jr., Commissioner
Office of the Commissioners