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Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

On June 1, 1994, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) in which the Commission proposed to amend 18 CFR Part 35 by adding a new Subpart E, setting forth guidelines for the formation, organization and purpose of Funds by public utilities and for the investment of Fund assets.

The Commission proposed to adopt: (a) *General* guidelines for the formation, organization and operation of Funds; and (b) *specific* guidelines governing the quality and quantity of investments that Funds may make. The Commission requested comments on: (a) The proposed general and specific guidelines; (b) the meaning of the reasonable person standard under the general guidelines and under Alternatives 2 and 3 of the specific guidelines; and (c) on two additional issues: (1) The treatment of monies collected in rates for decommissioning before the effective date of the final rule in this proceeding; and (2) whether, and, if so, under what circumstances, the Commission should allow Funds to follow State trust fund standards for that portion of contributions and earnings that are related to Commission-jurisdictional service.[1]

A. General Guidelines Governing the Organization and Operation of Funds

The proposed general guidelines provide that the Fund must be an external trust fund and that the Trustee must be independent of the utility, have a net worth of at least $100 million, and exercise the care that a reasonable person would use in the same circumstances.

Under the NOPR, the Trustee would: (a) Keep accurate and detailed records; (b) open the Fund to inspection and audit; (c) limit Fund investments to those that the Commission allows; and (d) not invest in any securities of the utility that owns the plant, or in the utility's affiliates, associates, successors or assigns.

The Trustee would also use the Fund only to decommission the nuclear power plant to which the Fund relates, and to pay any administrative or other expenses of the Fund. If Fund balances exceed the amount necessary for plant decommissioning, the utility would refund the excess to its customers in a manner that the Commission will determine. The utility would deposit in the Fund at least quarterly all monies that it collects in Commission-jurisdictional rates to fund decommissioning. The proposed general guidelines also provided that establishing a Fund does not relieve a utility of any obligation that it may have to decommission a nuclear power plant.

B. Specific Guidelines Governing the Investment of Fund Monies

The Commission proposed for consideration three alternative approaches to Fund investment:

Alternative No. 1.: No change in present guidelines, *i.e.*, continuation of ''Black Lung'' restrictions;

Alternative No. 2.: A reasonable person standard with no restrictions; and

Alternative No. 3.: A reasonable person standard with certain restrictions on the quality and quantity of Fund investments.

[1] Nuclear Plant Decommissioning Trust Fund Guidelines; Notice of Proposed Rulemaking, 59 FR 28297 (June 1, 1994), IV FERC Stats. & Regs., Proposed Regulations ¶ 32,506 (1994).

The Commission requested comments on the appropriate alternative. With respect to the general guidelines and with respect to Alternatives 2 and 3 of the specific guidelines, the Commission requested comments on the precise definition and content of the reasonable person standard.

Thirty-three entities (Commenters) submitted comments.[2] The Commission is now adopting a final rule promulgating regulations governing the formation, organization and operation of Funds and permissible Fund investments applicable to amounts collected from Commission-jurisdictional customers for nuclear decommissioning.[3]

[2] The Commenters are: Boatmen's Trust Company of Illinois and Boatmen's Trust Company (Boatmen's); Sanford C. Bernstein & Co. (Bernstein); Carolina Power & Light Company (Carolina Power & Light); Connecticut Department of Public Utility Control (Connecticut Commission); Consolidated Edison Company of New York (Consolidated Edison); Consumers Power Company (Consumers Power); Cooperatives (consisting of Old Dominion Electric Cooperative, North Carolina Electric Membership Cooperative, Oglethorpe Power Corporation and the National Rural Electric Cooperative Association); Duke Power Company (Duke); Edison Electric Institute (Edison Electric); Entergy Services, Inc. (Entergy - commenting on behalf of: Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, and System Energy Resources, Inc.); Florida Power & Light Company, Texas Utilities Electric Company, and The Washington Public Power Supply System (Companies); Florida Public Service Commission (Florida Commission); Indiana Michigan Power Company (Indiana Michigan); Investment/Trust/Utility Companies; Louisiana Public Service Commission (Louisiana Commission); Maine Yankee Atomic Power Company (Maine Yankee); Mellon Bank (Mellon); Michigan Public Service Commission (Michigan Commission); National Association of Regulatory Utility Commissioners (NARUC); New England Power Company (New England Power); New Hampshire Nuclear Decommissioning Finance Committee (New Hampshire Committee); New York State Department of Public Service (New York State); NISA Investment Advisors, L. L. C. (NISA); Northeast Utilities Service Company (Northeast Utilities); Nuclear Energy Institute (Nuclear Energy); Nuveen-Duff & Phelps Investment Advisors (Nuveen); Pennsylvania Public Utility Commission (Pennsylvania Commission); South Carolina Electric & Gas Company (South Carolina E&G); Union Electric Company (Union Electric); Virginia Electric and Power Company (Virginia Power); Wisconsin Electric Power Company (Wisconsin Electric); and Wisconsin Power and Light Company (Wisconsin Power and Light).

Because the Investment Advisory and Trust Companies' and the Utility Companies' comments are virtually identical, we are treating their comments, although filed separately, as joint comments. Citations to these filings will track the page numbers in the Investment Advisory and Trust Companies' filing. Appendices A and B list the Investment Advisory and Trust Companies and the Utilities Companies respectively.

Note: These Appendices will not appear in the Code of Federal Regulations.

Although Companies filed their Comments one day past the filing deadline, we find good cause to accept them.

[3] The Funds' funding status as of December 31, 1993 appears in Appendix C. Please Note: This