

example, a utility would need to supply to the fiduciary, and to regularly update, essential information about the nuclear unit covered by the Trust Fund Agreement, including its description, location, expected remaining useful life, the decommissioning plan that the utility proposes to follow, the utility's liquidity needs once decommissioning begins, and any other information that the fiduciary would need to construct and maintain, over time, a sound investment plan. A prudent utility would also monitor the fiduciary's performance and, if necessary, replace the fiduciary if the fiduciary is not properly performing its assigned responsibilities.

To ensure that the fund assets are not available to creditors in the event of the bankruptcy of the utility, the Trust assets must be segregated from those of the utility and outside the utility's administrative control. There must be a written trust agreement and the fiduciary or fiduciaries, in fulfilling the various duties, must be completely separate and apart from the utility.⁹⁶ The utility may provide general investment policies, but it may do so only in writing and it may not engage in the day-to-day management of the Fund or mandate or itself make individual investment decisions. These criteria accord with the NRC's regulations and the NRC Staff guidelines on the subject of ensuring the availability of funds for decommissioning nuclear reactors.⁹⁷

The \$100,000,000 net worth requirement for a fiduciary ensures that the fiduciary will have the necessary assets to adequately self-insure its performance. In calculating the \$100,000,000 net worth requirement, we will take into account the net worth of the fiduciary's parent corporation and affiliates *only* if those entities agree to act as guarantors for the fiduciary with regard to its Fund responsibilities. If they do not, then their assets are irrelevant to the purpose of the \$100,000,000 net worth requirement, since those assets would not be available to insure the fiduciary's performance.

As an integral part of our oversight function, we will retain the requirement that a utility notify the Commission before auditing a Fund and we will retain our authority to direct a utility to audit or inspect the Fund. There is no need to decide Virginia Power's position

that the provision allowing the Commission to direct a public utility to perform an audit or inspection of the Fund is unnecessary since we believe it is appropriate in any event to clearly specify this requirement. Even though we will receive annual statements showing all Fund activity, we must ensure that the statements are correct. We can conduct our own audits. But the Fund oversight function imposes an additional burden on the Commission's resources and it may be necessary to direct public utilities to perform the audits or inspections and forward the results of their monitoring to the Commission.

We will not provide blanket authority for utilities to bill current and past customers for Fund shortages. We hope that there will be no Fund shortages and that utilities are collecting all of their wholesale decommissioning costs through the rates that they have on file with this Commission. However, the actual, total cost of decommissioning will not be known for years. Whether Funds' assets are sufficient, insufficient, or just right will not be known until that time. Accordingly, we will consider requests to bill current and past customers for Fund shortages on a case-by-case basis.

We will not allow utilities to pay shareholders out of Fund assets. It is the ratepayers who are paying for decommissioning through their wholesale rates. Commenters have submitted no evidence that shareholders have contributed to meeting decommissioning expenses. Decommissioning expenses are costs of doing business for which public utilities are entitled to reimbursement from their ratepayers.

Edison Electric asks that we allow a company to receive some portion of any Fund surplus resulting from superior Fund and/or decommissioning-cost management.⁹⁸ Edison Electric does not explain what it considers to be superior Fund and/or decommissioning-cost management and offers no norm against which to measure such management.⁹⁹ What Edison Electric overlooks is that ratepayers should receive the best Fund and decommissioning-cost management available as a matter of course. Companies should not profit from providing the service that they should provide in the normal course of conducting their business.

We will adopt Commenters' suggestion and not allow a company

with multiple Funds to retain any excess in a particular Fund until there is no possibility of a decommissioning deficiency in another Fund of the same company.¹⁰⁰ Companies must meet Fund deficiencies on a unit-by-unit basis. Funds are not generic. Each Fund can only be unit-specific, because the fiduciary duty of Fund managers can only be to the ratepayers who have contributed to the cost of decommissioning the specific unit for which it manages the Fund. A particular fiduciary may administer more than one Fund, but it has a separate fiduciary responsibility to each Fund.

Were a utility able to use excesses in one Fund to offset deficiencies in other Funds, one set of ratepayers would be required to subsidize other ratepayers. The remedy for a Fund deficiency is not to take a surplus from another Fund, but to adjust the collections for the Fund that is deficient.

We reject Investment/Trust/Utility Companies' suggestion that a public utility need not establish a separate Fund for Commission-jurisdictional decommissioning collections, but only set aside a percentage of the assets of a Fund equal to the Commission-jurisdictional portion of the total balance of the Fund.¹⁰¹ Public utilities must establish a separate Fund for Commission-jurisdictional decommissioning collections. Although this will add to a utility's administrative expenses, it is the only way that we can ensure the integrity of Commission-jurisdictional Funds.

We will adopt Commenters' suggestion that we except investments in broad market indexes or other mutual funds from the "exclusion of affiliates" provision. Were we not to make this exception, the "exclusion of affiliates" provision would unduly restrict investments in market indexes and other mutual funds, and make such investments inordinately difficult to place and to monitor, especially for Funds that pertain to jointly-owned units, when several different utilities are participating owners of the same nuclear unit.¹⁰²

The reason for the requirement that utilities make deposits to the Funds every quarter is to ensure that utilities promptly deposit into the Funds (and thus begin earning a return on) the monies that they collect for decommissioning. The notion that utilities might make Fund deposits annually, except when annual

⁹⁶ Cf. *In Re: Columbia Gas Systems, Inc., et al.* 997 F.2d 1039 (3rd Cir. 1993).

⁹⁷ 10 CFR 50.75(e)(1)(ii); U.S. Nuclear Regulatory Commission, *Regulatory Guide: Assuring the Availability of Funds for Decommissioning Nuclear Reactors* (1990) at 1.159-4.

⁹⁸ Edison Electric Comments at 31-32.

⁹⁹ As discussed above, utilities will not manage the Funds. That will be the role of the independent fiduciaries.

¹⁰⁰ See Indiana Michigan Comments at 12.

¹⁰¹ See Investment/Trust/Utility Companies' Comments at 11.

¹⁰² See Northeast Utilities Comments at 15.