

contributions would exceed a million dollars,<sup>103</sup> is unacceptable. Such a rule could deprive Funds of earnings on large amounts of ratepayer-contributed monies. The purpose of collecting decommissioning funds through wholesale rates is solely to fund nuclear decommissioning. Public utilities should be using these funds for no other purpose and they should be depositing these monies into the Funds as promptly as possible. If a public utility faces special circumstances, it may apply for a waiver of this rule. We will consider requests for such waivers on a case-by-case basis.

We agree with Commenters that a fiduciary's standard of care under the general guidelines must be the same standard of care that the Commission adopts under the specific guidelines for Fund investments.<sup>104</sup> We will discuss this standard of care in the next section and will incorporate into the fiduciary's standard of care under the general guidelines the same standard of care that we adopt under the specific guidelines for Fund investments.

We will adopt Edison Electric's recommendation<sup>105</sup> and provide that the Final Rule applies only to Commission jurisdictional Funds. The Final Rule will also provide that it is not the responsibility of the Fund's fiduciary investment manager to ensure that the amount of monies that a Fund contains are adequate to pay for decommissioning.<sup>106</sup>

We will not delete the term "associates" from the Final Rule. The only reason that Commenters advance for omitting this term from the Final Rule is that, in their view, the meaning of this term is unclear.<sup>107</sup> By the term "associates" we mean any companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the utility.<sup>108</sup>

We agree with Commenters that the references to tax maximization and minimization in the NOPR are unclear.<sup>109</sup> In the Final Rule we will adopt Commenters' suggested language, slightly modified, as follows:

The utility and Fiduciary shall seek to obtain the best possible tax treatment of

amounts collected for nuclear plant decommissioning. In this regard, the utility and Fiduciary shall take maximum advantage of tax deductions and credits, when it is consistent with sound business practices to do so. [<sup>110</sup>]

This modification obviates the need to redefine the word "liquidity" to mean "giving due consideration to the timing of the need for the funds[]" as Edison Electric recommends.<sup>111</sup>

Investment/Trust/Utility Companies asks the Commission to define the term "costs of decommissioning the nuclear power plant," and offers the following definition of the term:

The term "cost of decommissioning" means all expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant that has permanently ceased the production of electric energy, including all costs necessary to bring the plant site to "greenfield" status and any other type of cost included in a study accepted by the Commission as a basis for determining the amount to be included in rates charged to customers. Such term includes all expenses incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all expenses to be incurred after the actual dismantlement occurs, such as physical security and radiation monitoring expenses. The term also includes costs of spent fuel storage, disposal and removal and low level waste storage, disposal and removal. For a single asset company, the term includes the winding up costs of the company. The term includes costs whether they are treated as capital items or expense items for regulatory, financial, or tax accounting purposes. [<sup>112</sup>]

Decommissioning nuclear plants and recognition and measurement of the related costs is complex.<sup>113</sup> The Commission has had little experience in examining the actual expenditures required in connection with decommissioning a nuclear power plant. For this reason it would not be appropriate to adopt at this time any definition, either that proposed by Investment/Trust/Utility Companies or otherwise. If we were to do so, we are afraid that costs legitimately part of decommissioning would be excluded because such costs failed to fall within the categories provided by the definition. For the purposes of the Final Rule, we need only define the amounts

that are subject to the Final Guidelines that we are adopting. In that regard, the Final Rule provides that all amounts approved by the Commission as decommissioning expenses in public utilities' rates are subject to the Fund requirements of the Final Rule.

However, we do not agree that, in the case of a public utility having but a single asset, which is a nuclear generating unit, *all* costs associated with winding up the affairs of the company are necessary decommissioning costs.<sup>114</sup> In any event, this issue is best addressed on a case-by-case basis.

Several commenters pointed out that public utilities may establish both qualified and non-qualified Funds with respect to a utility's interest in a specific nuclear plant. The Final Rule will apply to both "qualified" (under Code section 468A) and non-qualified Funds.<sup>115</sup>

We will partially adopt Michigan Commission's suggestion and provide that fiduciaries shall not invest in any securities of the subsidiaries, affiliates, or associates or their successors or assigns of the utility for which they manage the Fund.<sup>116</sup> The only exception to this restriction will be for investments in mutual funds or in broad market indexes, since such a restriction would virtually preclude such investments.

## VIII. Reports

In the NOPR, the Commission proposed that the utility must submit to the Commission by June 30 of each year a copy of the financial report that the fiduciary furnishes to the utility for the most recent 12-month period, showing assets and liabilities and various other information.<sup>117</sup> Indiana Michigan asks the Commission to: (a) change the wording "the most recent 12-month period" to "the prior calendar year;" and (b) eliminate the word "liabilities," since the Fund should have only assets. Indiana Michigan also asks the Commission to consider allowing the companies to maintain the fiduciary's reports available for inspection by Commission auditors, rather than file the reports with the Commission.<sup>118</sup>

Edison Electric requests that the provision for the filing of reports specify that the reports due by June 30th are or may be for the preceding calendar year rather than for the most recent 12-month period. Edison Electric also suggests that the Commission consider allowing

<sup>103</sup> See Entergy Comments at 2; Nuclear Energy Comments at 3; Investment/Trust/Utility Companies Comments at 14.

<sup>104</sup> See Investment/Trust/Utility Companies Comments at 12.

<sup>105</sup> See Edison Electric Comments at 30.

<sup>106</sup> See Investment/Trust/Utility Companies Comments at 17.

<sup>107</sup> See *Id.* at 12.

<sup>108</sup> See 18 CFR Part 101, Definition 5A.

<sup>109</sup> Edison Electric Comments at 29–30.

<sup>110</sup> See Investment/Trust/Utility Company Comments at 14.

<sup>111</sup> See Edison Electric Comments at 32.

<sup>112</sup> Investment/Trust/Utility Companies' Comments at 12–13.

<sup>113</sup> We note that the Financial Accounting Standards Board presently has under consideration a project to address the accounting for nuclear plant decommissioning.

<sup>114</sup> See Maine Yankee Comments at 5.

<sup>115</sup> See Investment/Trust/Utility Companies Comments at 11 and n.4, and 16.

<sup>116</sup> See Michigan Commission Comments at 3.

<sup>117</sup> 59 FR 28302 (June 1, 1994), IV FERC Stats. & Regs., Proposed Regulations at 32,856–58.

<sup>118</sup> Indiana Michigan Comments at 14.