companies to keep the reports on file and open to Commission inspection, rather than requiring the companies to file the reports with the Commission.[119]

Consolidated Edison suggests that the Commission consider allowing utilities to file the Fund annual report as part of the utility's FERC Form No. 1.[120]

Investment/Trust/Utility Companies asks the Commission to state that the required financial report should include only the assets of the Fund (*e.g.*, obligations held by or on behalf of the Fund) and only the liabilities of the Fund (*e.g.*, accrued but unpaid taxes or fiduciaries' fees), and not the liability for decommissioning, which is a liability of the utility, not of the Fund. Investment/Trust/Utility Companies also asks the Commission to specify that the term ''most recent 12 months'' refers to the most recently-completed annual accounting period that the Fund uses.[121]

Duke maintains that the Commission's proposed reporting requirements are an additional, unnecessary burden. Duke submits that the Commission could obtain the same information during its routine audits of the utilities.[122] The Louisiana Commission recommends a comprehensive set of reporting requirements to promote ''a dialogue between consumer representatives * * * and * * * utilities on investment and fund management practices.'' [123] In addition to financial statements, identification of fiduciaries, the manner of their selection, and a statement of their fees, the Louisiana Commission would require, among other things, a comparison of asset returns with the returns of the Standard & Poor's 500 and a narrative description of the Fund's investment strategy.[124]

Commission Rulings

We will adopt Edison Electric's suggestion to report the prior calendar year performance. This will permit the Commission to monitor how a Fund is performing in relation to other Funds and will permit ready identification over time of Funds that may be significantly under-performing. Allowing Funds to report on different time periods would complicate such analysis.[125] We will require utilities to file the reports by March 31 of each year, with the first report due April 1, 1996 (March 31 of that year being a Sunday). This will afford sufficient time for any changes necessary in current reporting systems.[126]

We will also maintain the requirement that utilities submit the annual Fund reports to the Commission, rather than simply retain them, open for inspection. Having to go to each utility to review the Funds' annual reports would unnecessarily burden the Commission's resources.

We will not make the Funds' annual reports part of FERC Form No. 1. To do so would require development and use of a structured format particularly for purposes of our electronic filing requirements for that form. The submission of a copy of the financial reports provided by the Fund fiduciaries will be administratively less burdensome and will be sufficient for our purposes.

We will not omit from the reporting requirements the word ''liabilities.'' We must know if Funds incur liabilities and the amounts of those liabilities or our oversight would be incomplete.[127]

We disagree with Duke that the reporting requirement is unnecessary. Duke's thesis is that the Commission can obtain the required information during its routine audits of the utilities. However, the Commission does not audit each public utility annually. The information will not always coincide with our scheduled audit activity. Moreover, an annual filing requirement will provide the Commission greater flexibility to monitor Funds. The Commission has a responsibility to routinely monitor the Funds in order to protect ratepayer interests.

We reject Louisiana Commission's proposed reporting requirements as unnecessary. The reporting requirements that we adopt are sufficient for our purposes.[128]

We will adopt the recommendation of Investment/Trust/Utility Companies and provide that the required financial report should include only the assets and liabilities of the Fund and not the liability for decommissioning. Investment/Trust/Utility Companies are correct that the decommissioning expense is a liability of the utility and not of the Fund.

IX. The Alternatives

A. Alternative No. 1: No Change in Present Guidelines, I.E., Continuation of Black Lung Restrictions

No Commenter favors adoption of Alternative No. 1 and most parties oppose its adoption. Commenters recognize the need to ensure that the requisite funds will be available at decommissioning. But Commenters argue, among other things, that Black Lung investments are not necessarily as safe as they seem, and that they disadvantage ratepayers, because they do not keep up with inflation and necessitate higher collections to meet the projected decommissioning liability.[129] Commenters also argue that the Black Lung Guidelines are not required, because prudent investment principles and the standard that applies to fiduciaries for private pension plans under section 404 of the Employee Retirement Income Security Act of 1974 (''ERISA'')(29 U.S.C. § 1104) (the ERISA standard) provide ample, tested, and federally-sanctioned protection to ratepayers.[130] But Edison Electric cautions that, if the Commission selects a guideline that allows for investments in other than Black Lung instruments, the Commission should make it clear that investment in a Black Lung instrument is not proscribed, so long as the investment is prudent under the circumstances.[131] While Indiana Michigan opposes the Commission's limiting Fund investments to Black Lung instruments, it states that the Commission should make it clear that Black Lung instruments may form part of a Fund's portfolio depending on the Fund Manager's evaluation of the risk and rewards of such investment.[132]

New York State maintains that certain criticisms of the Black Lung Guidelines are unfounded. First, in its view, arguments that the Black Lung Guidelines are not a guarantee against loss are inapposite. New York State recognizes that, while Black Lung instruments are conservative investments, they are not guaranteed against loss. But New York State notes that Black Lung investments are very low risk, and, barring a national

[119] Edison Electric Comments at 25.

[120] Consolidated Edison Comments at 5.

[121] Investment/Trust/Utility Companies at 9.

[122] Duke Comments at 5.

[123] Louisiana Commission Comments at 10.

[124] Louisiana Commission Comments, Appendix A at 15–16.

[125] We believe, however, that any comparisons of Fund performances must be based on several years' data.

[126] For this reason we reject Nuclear Energy's suggestion that the utility decide the reporting period based on *its* reporting responsibilities to the Commission, State regulators and the NRC. *See* Nuclear Energy Comments at 3.

[127] For example, each fund will probably have unpaid fiduciaries' fees.

[128] Of course, the Louisiana Commission can impose whatever reporting requirements are lawful under its authorities on Funds for retail customers.

[129] *See* Bernstein Comments at 2; Consolidated Edison Comments at 3; Consumers Power Comments at 3; Cooperatives Comments at 6–7; Duke Comments at 2; Edison Electric Comments at 14–15; Investment/Trust/Utility Companies Comments at 3; Louisiana Commission Comments at 4–6; New York State Comments at 4–5; Northeast Utilities Comments at 6–8; Pennsylvania Commission Comments at 3, 13, and 20; Wisconsin Power Comments at 1–2.

[130] *See* Consumers Power Comments at 4.

[131] Edison Electric Comments at 15.

[132] Indiana Michigan Comments at 2.