

it manages the funds or in that utility's subsidiaries, affiliates, or associates or their successors or assigns.

(9) The utility and the Fiduciary shall seek to obtain the best possible tax treatment of amounts collected for nuclear plant decommissioning. In this regard, the utility and the Fiduciary shall take maximum advantage of tax deductions and credits, when it is consistent with sound business practices to do so.

(10) Each utility shall deposit in the Fund at least quarterly all amounts included in Commission-jurisdictional rates to fund nuclear power plant decommissioning.

(b) The establishment, organization, and maintenance of the Fund shall not relieve the utility or its subsidiaries, affiliates or associates of any obligations it may have as to the decommissioning of the nuclear power plant. It is not the responsibility of the Fiduciary to ensure that the amount of monies that a Fund contains are adequate to pay for a nuclear unit's decommissioning.

(c) A utility may establish both qualified and non-qualified Funds with respect to a utility's interest in a specific nuclear plant. This section applies to both "qualified" (under Internal Revenue Code (26 U.S.C. 468A) or any successor section) and non-qualified Funds.

(d) A utility must regularly supply to the Fund's Investment Manager, and 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 the utility proposes to follow, the utility's liquidity needs once decommissioning begins, and any other information that the Fund's Investment Manager would need to construct and maintain, over time, a sound investment plan.

(e) A utility should monitor the performance of all Fiduciaries of the Fund and, if necessary, replace them if they are not properly performing assigned responsibilities.

(f) These regulations apply only to Commission-jurisdictional funds.

§ 35.33 Specific provisions.

(a) In addition to the general provisions of § 35.32, the Trustee must observe the provisions of paragraph (b) of this section.

(b) The Trustee may use Fund assets only to:

(1) Satisfy the liability of a utility for decommissioning costs of the nuclear

power plant to which the Fund relates as provided by § 35.32; and

(2) Pay administrative costs and other incidental expenses, including taxes, of the Fund as provided by § 35.32;

(3) To the extent that the Trustee does not currently require the assets of the Fund for the purposes described in paragraphs (b)(1) and (b)(2) of this section, the Investment Manager, when investing Fund assets, must exercise the same standard of care that a reasonable person would exercise in the same circumstances. In this context, a "reasonable person" means a prudent investor as described in *Restatement of the Law, (Third), Trusts § 227*, and including general comments and reporter's notes, pages 8–101. St. Paul, MN: American Law Institute Publishers, 1992. ISBN 0–314–84246–2. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and are also available in local law libraries. Copies may be inspected at the Federal Energy Regulatory Commission's Library, Room 8502, 825 North Capitol St., NE., Washington, DC or at the Office of the Federal Register, 400 North Capitol St., NW., Room 700, Washington, DC.

(c) The utility must submit to the Commission by April 1, 1996 and by March 31 of each year thereafter, a copy of the financial report furnished to the utility by the Fund's Trustee that shows for the previous calendar year:

(1) Fund assets and liabilities at the beginning of the period;

(2) activity of the Fund during the period, including amounts received from the utility, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including taxes; and

(3) Fund assets and liabilities at the end of the period. The report should not include the liability for decommissioning.

(d) If an independent public accountant has expressed an opinion on the report or on any portion of the report, then that opinion must accompany the report.

Appendix A

Investment/Trust/Utility Companies

Ark Asset Management Co., Inc.
Bank of New York

Delaware Investment Advisers
Fidelity Management Trust Co.
J.P. Morgan Co.
Loomis, Sayles & Company
MD SASS Investors Services, Inc.
Mellon Bank
National Investment Services of America, Inc.
NBD Bank, NA
Nuveen Duff & Phelps Investment Company
Payden & Rygel
Pittsburgh National Bank
PNC Bank
Sanford Bernstein & Company, Inc.
Scudder, Stevens & Clark, Inc.
State Street Bank and Trust Company
T. Rowe Price Associates
Wellington Management Co.

Appendix B

Utility Companies

Arizona Public Service Co.
Arkansas Power & Light Co.
Carolina Power & Light Co.
Central Power and Light Co.
Cleveland Electric Illuminating Co.
Commonwealth Edison Co.
Connecticut Light & Power Co.
Connecticut Yankee Atomic Power Co.
Delmarva Power & Light Co.
Detroit Edison Co.
Duke Power Co.
Florida Power & Light Co.
Florida Power Corp.
Gulf States Utilities Co.
Houston Lighting & Power Co.
Illinois Power Co.
Indiana Michigan Power Co.
Iowa Electric Light and Power Co.
Jersey Central Power & Light Co.
Louisiana Power & Light Co.
Madison Gas and Electric Co.
Maine Yankee Atomic Power Co.
Metropolitan Edison Co.
Niagara Mohawk Power Corp.
North Atlantic Energy Co.
Northern States Power Co.
Ohio Edison Co.
Pacific Gas & Electric Co.
Pennsylvania Electric Co.
Pennsylvania Power & Light Co.
Pennsylvania Power Co.
Philadelphia Electric Co.
Public Service Co. of New Hampshire
Public Service Electric and Gas Co.
Rochester Gas and Electric Co.
Southern California Edison Co.
System Energy Resources, Inc.
Texas Utilities Electric Co.
Toledo Edison Co.
Union Electric Co.
Vermont Yankee Nuclear Power Corp.
Virginia Electric Power Co.
Western Massachusetts Electric Co.
Western Resources, Inc.
Wisconsin Electric Power Co.
Wisconsin Power and Light Co.
Wisconsin Public Service Corp.