

Commission encourages creative solutions in this regard.<sup>52</sup>

Without advance planning, the financing of decommissioning costs may well cause problems at the time of decommissioning. Licensees have argued that the Commission should impose no funding requirements in its licenses. While the Commission has decided not to adopt any generic funding requirements, licensees should not view the Commission's decision as an impediment to ordering whatever decommissioning steps it deems appropriate when the time for decommissioning a particular project arrives.<sup>53</sup> The licensee has the responsibility for project retirement. In those situations where a licensee has not been required to undertake pre-retirement funding, and it determines on its own that decommissioning is probable and the costs can reasonably be estimated, a public utility licensee can file to recover such costs in rates.

If funding requirements have been established in a license issued by the Commission, licensees subject to the Commission's ratemaking jurisdiction can recover an appropriate share of funding amounts in subsequent wholesale rate filings.<sup>54</sup> In situations where the Commission has not required pre-retirement funding in a license, and it is subsequently determined that decommissioning is necessary, a licensee that is a public utility may file to recover an appropriate share of decommissioning costs through wholesale rates, on a prospective basis.

The foregoing discussion is directed to project-specific funding. The NOI also raised the possibility of establishing some type of industry-wide fund, financed by annual charges imposed by the Commission. In this instance, the licensee would not be pre-funding its own decommissioning costs but rather would be helping underwrite the costs of other licensees (presumably those lacking the resources to meet their own obligations). The Commission has

concluded at the present time that such a fund is inappropriate. There is little specific evidence concerning the need for such a fund,<sup>55</sup> while the practical problems of implementing the program fairly and administering it soundly would be formidable. Should later experience with decommissioning demonstrate a stronger need, the Commission can reassess the issue at that time.

#### List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric Power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Commissioner Bailey dissented with a separate statement attached.

**Lois D. Cashell,**  
*Secretary.*

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

### PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding § 2.24, to read as follows:

#### § 2.24 Project Decommissioning at Relicensing.

The Commission issued a statement of policy on project decommissioning at relicensing in Docket No. RM93–23–000 on December 14, 1994.

**Note:** This Appendix will not be published in the Code of Federal Regulations.

#### Appendix A—Comment Summary

In response to the NOPR, the Commission received comments and reply comments from a great many commenters, including municipal and non-municipal licensees; federal, state, and local governmental organizations; national, regional, and local environmental, trade, or other organizations and associations; and private citizens. The more substantial comments are identified at the end of this comment summary, grouped by

category and showing the shortened names or acronyms used in this summary. In addition, there was a large volume of comments in the nature of one to three-page letters. Many were from individuals (including operators of small hydro projects) and many were from local or regional organizations or local branches of national organizations.

In general, the commenters fall into two distinct groups of roughly equal size. One group takes what might be loosely characterized as a “strict construction” approach to the legal issues, contending that the Commission's organic statutes do not authorize it to compel the decommissioning of a project except under narrowly prescribed procedures that entail reimbursement of the licensee. The advocates of this position include the licensees and their organizations.

The second group might be loosely characterized as taking a broader approach to statutory interpretation, contending that the Commission has considerable inherent authority to decline to relicense a project whose license has expired, and to compel the licensee to decommission the project (including, if appropriate, removal of a dam or other project facilities) at the licensee's expense. The advocates of this position include a broad array of national, regional, and local environmental groups, as well as federal and state agencies.

Many commenters addressed the specific questions posed in the NOPR. Other commenters expressed more general views. Some commenters expressed their legal analysis in broad terms, with their answers to the questions being framed as cross-references to their broader discussion.<sup>56</sup> Many commenters endorsed the more extensive comments of an association to which they belong, adding supplemental views or emphasizing particular points. Many of the shorter letters referred to the views expressed by organizations that filed lengthier comments. A limited number of commenters filed reply comments.

This summary discusses first the comments on the broader issues and then the comments in response to the specific questions posed by the NOPR.

<sup>56</sup> EEI, for instance, discussed the issues in one broad narrative; APPA divided its comments into separate responses to the specific questions; and NHA commented broadly in the first half of its submission and then responded to specific questions in the second half. Reform and Kennebec also split their comments between a general discussion and specific responses to questions.

<sup>52</sup> See *Consumers Power Company*, 68 FERC ¶ 61,077 at pp. 61,380–83 (1994).

<sup>53</sup> By the same token, the establishment of a fund does not necessarily mean that a project will ultimately be decommissioned. Likewise, any planning and funding that does occur will not control the scope of the ultimate decommissioning, should that prove necessary. If funds prove inadequate, more will have to be supplied. There may also be more funds than are ultimately needed.

<sup>54</sup> If it turns out that costs actually incurred for decommissioning are greater than the funding amounts, the licensee may seek to recover the additional costs through rates. However, if it turns out that the costs actually incurred at the time of decommissioning are less than the funding amounts, the licensee and its shareholders may not keep those amounts; rather, the licensee will be required to refund them to ratepayers.

<sup>55</sup> For example, the main support seems to come from those government authorities who otherwise fear they might have to absorb costs associated with abandoned projects owned by those without significant financial resources. However, those authorities have not shown that they have broadly implemented such a program for permittees within their jurisdictions, as might be expected if major problems had developed on this score.