public utility commission, but believes project-specific funds would be preferable.176

New York suggests that new projects be required to establish a trust fund, but that existing projects contribute to a statewide or regional pool of funds. New York expresses concern that a nationwide pool of funds might lead to inequitable use of the funds by different regions.177

Oregon notes that a program-wide fund would finance decommissioning of "orphaned" projects, but believes the problems inherent in administering it would outweigh the benefits in that it would likely be contentious, burdensome, and inequitable. Oregon also suggests that part of a fund could be used "as an endowment" to help finance maintenance. Oregon states that it might "be willing to assume responsibility for some projects that no longer generate power."¹⁷⁸

Walton proposes a "multi-faceted approach" that includes project-specific funds, regional funds, watershed funds, and multi-project single owner funds, as appropriate.179 S'Klallam suggests individual performance bonds backed up by an industry-wide fund.¹⁸⁰ Seattle suggests a national decommissioning insurance fund financed through fees assessed on all licensees.181

14. With respect to both a project-specific fund and a program-wide fund, what mechanisms would be used for collecting and administering the money? Would such a fund be administered by the licensees (jointly or severally), by State government agencies, or by the Commission? Who would determine how much money to collect, and pursuant to what guidelines? Who would determine how and when to allow monies from the fund to be dispersed, and what findings would be needed to make those determinations? What accounting standards would be utilized?

APPA suggests that there are no good answers to these questions, and that a program-wide fund would be inconsistent with sound regulatory policy.182

Reform would require each licensee to establish a segregated fund for each of its projects, administered by a corporate trustee appointed by the licensee, and subject to periodic audit by the Commission. The Commission would determine the amount of money to be collected in the fund, based on its environmental analysis at relicensing of

- 179 Walton at 17.
- 180 S'Klallam at 16.

182 APPA at 23.

the cost of restoring preproject conditions at the project site. The money would be accumulated either through prepayment and appreciation or through periodic payments into an external sinking fund. The Commission would oversee the fund's investment strategy through promulgation of regulations. The Commission would determine when to decommission the project, and would require periodic financial accounting.183

Vermont contends that "[l]icensees should be required to project the cost of decommissioning and create a decommissioning fund through an annual set aside that would enable decommissioning by the end of the license term." 184 The estimated cost could be based on either dam retention or dam removal, with due consideration to any flood control purposes served by the dam. Vermont would also include a national fund to cover license surrenders by project owners who can't afford decommissioning costs. Vermont suggests use of a standard license article to implement whatever policies are adopted.

Commerce suggests that projectspecific trust funds could be administered by the licensee under strict guidelines established by the Commission, either in the license or generically, including minimum funding requirements and restrictions on investment interests, with Commission monitoring during the course of the license.185

New York prefers that decommissioning funds "be controlled at the state level. FERC could ultimately determine the amount of money to collect, based on the recommendations of consulting agencies and based on estimates provided as part of decommissioning plans submitted by the licensee".186

Michigan believes that the licensees should administer project-specific trust funds, and that the states, "on behalf of the ratepayers, as appropriate, and as guardians of the public trust, as well as their citizens' health, welfare, and safety, should be the beneficiaries."187 Washington Department advocates control of the fund by the Commission, to best assure that the money will be available when needed.188

New England suggests a case-by-case approach, fine tuning the trust fund mechanism to the peculiar facts and

circumstances of each project.189 PG&E also emphasizes the project-specific nature of decommissioning procedures and costs, ranging from removal of generating equipment to removal of a dam.190

Northern proposes, as an alternative to trust funds, that licensees incorporate estimated dam removal costs into depreciation for each specific project, so that the project owner would "carry a negative value for each project.' Northern also suggests use of an internal account similar to an amortization reserve. A further alternative would be allowing the licensee to demonstrate that "the current net worth of all company assets" is large enough to cover any estimated project removal costs. All of these alternatives would be subject to verification through periodic Commission audit.191

Peninsula suggests that some licensees might want to cooperate on a funding pool for a trust fund, perhaps with an insurance company, while others may prefer to self-finance through project-specific funds.¹⁹²

15. Would it be appropriate for the Commission to propose new regulations, license articles, or a policy statement that address any of the above matters? If so, what new regulations, license articles, or policy clarification should the Commission consider?

As noted above, licensees and their associations generally favor a case-bycase approach to decommissioning issues as they arise. APPA proposes elimination of certain existing regulations that it believes to be inconsistent with the FPA.¹⁹³ A number of commenters recommend that the Commission establish a decommissioning policy through the adoption of new regulations and standard license articles.194 Interior suggests that the articles set forth the Commission's policy on decommissioning including requirements for advance planning and for funding mechanisms.¹⁹⁵

Commerce urges the Commission to promulgate decommissioning standards in a policy statement, with implementing regulations to clarify that the Commission will mandate decommissioning when it finds that it would best serve the public interest. Commerce also suggests adding license

also Walton at 19-20.

195 Interior at 10.

193 APPA at 24.

¹⁷⁶ Commerce at 13-15.

¹⁷⁷ New York at 3.

¹⁷⁸ Oregon at 5-6.

¹⁸¹ Seattle reply comments.

¹⁸³ Reform at 43-47; see also Walton at 17-19.

¹⁸⁴ Vermont at 1-2. ¹⁸⁵ Commerce at 14; see also Walton at 17–19.

¹⁸⁶ New York at 4.

¹⁸⁹ New England at 7-9. 190 PG&E at 7.

¹⁹¹ Northern at 4-5.

¹⁹² Peninsula at 13.

¹⁹⁴ Reform at 48; Interior at 10; Michigan at 13-14; Washington Department at 3; New York at 4; see

¹⁸⁷ Michigan at 13.

¹⁸⁸ Washington Department at 2.