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FINAL REPLY:

Charles B. Ramsey
Department of the Treasury

TO:

Chairman Meserve

FOR SIGNATURE OF : ** GRN ** CRC NO: 00-0225

DESC:

NRC Inquiry Regarding the Tax Implications to
Nuclear Decommissioning Funds of the Sale of
Nuclear Generating Assets

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DATE: 04/10/00

ASSIGNED TO: CONTACT:
NRR Collins

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.

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SUBJECT:

Concerns NRC inquiry regarding the tax implications to nuclear decommissioning funds of the sale of nuclear generating assets

ACTION:

Appropriate

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~~CHAIRMAN, COMRS, OGC~~ RF

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OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MAR 22 2000

Richard A. Meserve, Chairman
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Meserve:

I am writing in response to former Chairman Jackson's inquiry raising certain concerns regarding the tax implications to nuclear decommissioning funds of the sale of nuclear generating assets. We have considered, and are continuing to consider, these issues as they are raised by taxpayers in requests for private letter rulings.

We are aware of the continued restructuring in the electric power industry and are cognizant of the impact our tax rulings have on the potential transfer of nuclear power plant assets. To date we have issued a number of private letter rulings relating to these issues - LTR 200004040 (October 29, 1999), LTR 199943041 (July 21, 1999), and LTR 199952074 (September 28, 1999). Finally, we continue to review these issues as they are raised in additional private letter ruling requests we have received.

I hope this information has been helpful. If you have any questions, please contact me at (202) 622-3110.

Sincerely,

CHARLES B. RAMSEY
Chief, Branch 6
Office of Assistant Chief Counsel
Passthroughs and Special Industries

REC'D BY

3 MAR 01 2000

EDO



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 20, 1999

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The Honorable Robert E. Rubin
Secretary of the Treasury
Washington, DC 20220

Dear Mr. Secretary:

I am writing to suggest that you consider, as appropriate and within your discretion, certain potential policy matters associated with nuclear plant license transfers. These matters may be pertinent to the treatment of tax questions concerning sales of nuclear generating assets that require the transfer of licenses issued by the Nuclear Regulatory Commission (NRC).

As you are aware, the electric power industry is being restructured. It is clear that a number of nuclear power plants will be sold as companies reposition themselves for the competitive market and, in some cases, divest their generation assets in response to State restructuring laws. In many, if not most, of the transactions involving nuclear power plants, the buyers are expected to be large nuclear generating companies (or affiliates) that own and operate a substantial number of nuclear units. A number of transactions involving nuclear power plants have already been announced. For example, the licensees for the Three Mile Island Unit 1 (TMI) and Pilgrim nuclear power stations are in the process of obtaining the necessary approvals from state and federal agencies, which include the NRC, the Federal Energy Regulatory Commission, and the Internal Revenue Service. On April 13, 1999, the NRC approved the transfer of TMI from General Public Utilities to AmerGen. On May 3, 1999, the Commission approved the transfer of Pilgrim nuclear power station from Boston Edison Co. to Entergy Nuclear Generation Co.

The NRC is charged with the responsibility to ensure that adequate funds to decommission nuclear power plants are established by licensees. The Commission also must ensure that license applicants are financially qualified to meet the regulatory provisions associated with safe operation of the facilities. These responsibilities are part of the mission of the NRC to regulate the nation's civilian use of byproduct, source and special nuclear materials to ensure adequate protection of public health and safety, the common defense and security, and the environment. For these reasons, the Commission believes it should present its perspectives on issues pertinent to license transfers and decommissioning funding.

As a policy matter, the Commission is paying close attention to deregulation to see whether it has any effects on the preservation of accumulating decommissioning funds and on operational safety. Restructuring and rate deregulation changes to the electric industry may occur rapidly. "The pace and degree of such changes could affect the factual underpinnings of the NRC's previous conclusions that power reactor licensees have access to adequate funds for

operations and can reliably accumulate adequate funds for decommissioning over the operating lives of their facilities." See Final Policy Statement on the Restructuring of the Electric Utility Industry, 62 FR 44,071 (Aug.19, 1997). To reflect the structural changes in progress in the electric power industry and to maintain the NRC's confidence that decommissioning funds will be available when needed, the NRC promulgated new rules on decommissioning funding in 1998. See Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, 63 Fed. Reg. 50465.

NRC requirements for decommissioning financial assurance include minimum amounts of funding required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level. Site-specific decommissioning cost estimates may indicate the need for funding greater than the minimum amounts specified in the NRC regulations. Use of these decommissioning funds remains subject to the general requirements and any specific requirements ordered or imposed by the NRC. Funds or securities deposited in a decommissioning fund must be segregated from licensee assets and outside the licensee's administrative control of cash and liquid assets to ensure that the funds will be sufficient to pay decommissioning costs. In accordance with these requirements, tax treatment of the transfer of decommissioning funds will not diminish the amount in the fund itself because 10 CFR 50.82(a)(8) and 50.2 would not allow withdrawals from the decommissioning fund to pay taxes on the fund transfer.

With these regulations in place we are confident that licensees will maintain the funds necessary to operate safely. But it is unclear to the Commission what effect tax liability will have on overall plant performance. We have been told that in the TMI and Pilgrim cases, the seller and buyer have filed requests for Private Letter Rulings with the IRS seeking clarification on a number of tax issues associated with these transactions. The Commission would not presume to take a position on what constitutes appropriate interpretation of the Internal Revenue Code. However, to the extent that negative tax treatment would preclude license transfers from occurring, in certain situations the opportunity to enhance plant performance and improve safety could be missed, e.g., where the would-be-buyer has a better performance record or more resources to devote to operations. Similarly, to the extent that transfers may tie up additional funds through tax liability that would otherwise be applied to improve the margin of safety, fewer safety enhancements may be possible.

Finally, in the case of the TMI transfer, we understand that rather than transferring the decommissioning fund to the buyer, the seller opted to remain a holder of the decommissioning trust fund due to potential tax implications. This alternative arrangement is more complex than a complete transfer of assets and will impose additional administrative burdens on the NRC as we endeavor to ensure the sufficiency of decommissioning funding, and hold all responsible parties accountable.

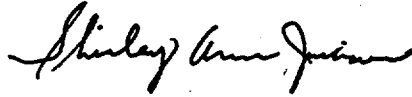
We wish to emphasize that regardless of the resolution of these tax liability issues, the Commission will do its part in enforcing NRC requirements intended to ensure safe operation of reactors and the adequacy of decommissioning funding.

While the predominant focus of this has been on power reactors, it should be recognized that issues regarding tax treatment of funds related to decommissioning funding obligations of nuclear materials users licensed by the NRC are also of concern. We note that in at least one

specific instance involving a material licensee in bankruptcy, the amount available for decommissioning was specifically dependent on the tax treatment of the decommissioning funds.

The NRC appreciates your consideration of this important matter. If the NRC can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley Ann Jackson".

Shirley Ann Jackson