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DEPARTMENT OF
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December 6, 1996

Secretary
U.S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington DC 20555

RE: Comments on U.S. Nuclear Regulatory Commission's
Draft Policy Statement on the Restructuring and Economic
Deregulation of the Electric Utility Industry
Docket No. SP-96-104

Dear Secretary:

Attached are the comments of the Minnesota Department of Public Service
in the above-referenced matter.

Sincerely,

SCOTT BROCKETT
MANAGER, ENERGY PLANNING AND ADVOCACY

SB/CTD/cw
Attachment

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DRAFT POLICY STATEMENT ON THE)
RESTRUCTURING AND ECONOMIC)
DEREGULATION OF THE)
ELECTRIC UTILITY INDUSTRY)

DOCKET NO. SP-96-104

COMMENTS OF THE
MINNESOTA DEPARTMENT OF PUBLIC SERVICE

DECEMBER 6, 1996

COMMENTS OF THE MINNESOTA DEPARTMENT OF PUBLIC SERVICE

I. INTRODUCTION

The Minnesota Department of Public Service (the Department) is an administrative agency within the State of Minnesota that represents the broad public interest in utility regulatory matters both before federal agencies and before the Minnesota Public Utilities Commission. The Department is also the State of Minnesota's lead energy-policy agency.

The Department believes that the NRC's Draft Policy Statement is timely. California and New Hampshire have already embarked on a restructuring process and the passage of federal and/or state legislation mandating direct access is fairly likely in the near future. The Department appreciates the opportunity to submit comments on the NRC's Draft Policy Statement.

The Department supports increased competition in the electric utility industry, including direct access, as a means of promoting efficiency and innovation. However, the economic benefits of increased competition should not come at the expense of reliability and safety. The Department believes that any restructuring of the electric utility industry must contain provisions and safeguards to protect these and other aspects of the public interest.

II. THE DRAFT POLICY STATEMENT

In its September 26, 1996, letter to state utility regulators, the Nuclear Regulatory Commission (NRC) requested comments on its Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry (Draft Policy Statement), which was published in the September 23, 1996, issue of the *Federal Register*. The Draft Policy Statement addresses NRC's expectations for, and intended approach to, power reactor licensees as the electric utility industry moves from rate regulation toward greater competition.

The Department believes that the NRC's policy concerns regarding the deregulation of the electric utility industry can be grouped into two related categories:

- It is more likely that the licensee of a nuclear power reactor would accumulate insufficient decommissioning funds.

- The licensee's profit motive would give it a stronger incentive to reduce operation and maintenance (O&M) and safety costs. These reductions could reduce operational safety.

In response to these concerns, the NRC states that it will:

- Continue to review financial qualifications, decommissioning funding and antitrust matters as described in the Standard Review Plans being developed in concert with its policy statement.
- Identify all owners, both indirect and direct, of nuclear power plants.
- Establish and maintain staff-level working relationships with state and federal regulators.
- Evaluate the relative responsibilities of power-plant co-owners/co-licensees.
- Evaluate how well its current regulations can address changes resulting from deregulation.

In our comments below, the Department discusses the adequacy of existing state and federal mechanisms and the NRC's proposed action steps to address its concerns regarding decommissioning funds and safety.

III. DECOMMISSIONING FUNDS

A. THE NRC'S CONCERN

As noted by the NRC in its Draft Policy Statement (61 FR 49711, September 23, 1996), licensees of nuclear reactors typically place decommissioning funds in external trust or escrow accounts that are reserved for decommissioning activities. Power reactor licensees accumulate all funds estimated to be needed for decommissioning by the time their facilities are permanently shut down. The NRC is concerned that electric deregulation could undermine the ability of the licensees to accumulate adequate funds for decommissioning over the operating lives of their facilities.

The Department observes that while deregulation does not create the inability to pay decommissioning costs, deregulation could exacerbate the problem. For example, consider the following scenarios under which decommissioning funds would be inadequate at the date of decommissioning:

- NRC shuts down a plant for safety reasons before the end of its expected operating life.
- A licensee shuts down a plant because it is no longer economic to operate.

- A licensee declares bankruptcy and its creditors stake a claim to the decommissioning funds.

Under the first two scenarios the decommissioning funds could be inadequate because they are collected over the operating life of a plant. If a plant does not operate for as many years as expected, it is difficult (although not impossible) to collect sufficient decommissioning funds. There are two reasons why the third scenario could result in inadequate decommissioning funds. First, the bankruptcy could result in the premature closing of a plant, thereby not allowing adequate time to collect decommissioning funds. Second, creditors could deplete the decommissioning funds.

Deregulation may further impair a licensee's ability to collect decommissioning costs under the aforementioned scenarios for the following reasons:

- A new, non-utility licensee may lack the financial resources to absorb decommissioning costs and the regulatory ability to collect decommissioning costs from customers.
- Licensees of high-cost plants would find it difficult to compete; therefore, they would be more likely to shut down their nuclear plants.
- New competitive pressures would reduce the licensees' incentive to ensure adequate maintenance and safety; therefore, the NRC may be more likely to find the need to shut down nuclear plants for safety reasons.

B. HOW THE POTENTIAL DECOMMISSIONING FUND PROBLEM IS CURRENTLY ADDRESSED

The Department believes that the potential for a licensee to have inadequate decommissioning funds already exists. However, the states and the NRC have instituted policies for preventing this situation, and for mitigating any problems that do occur. For example, all licensees in Minnesota have already established an external sinking fund. The Department does not believe that these funds can be touched by other creditors in the event of bankruptcy. Therefore, the external sinking fund will continue, regardless of the future structure of the electric utility industry.

The Northeastern United States has already experienced the closing of a nuclear plant before the end of its estimated operating lifetime. State regulators in the affected jurisdiction were able to recover the remaining costs from existing ratepayers. In a more competitive environment, it is unlikely that a power reactor licensee could pass on decommissioning costs or other costs to non-captive customers. However, these costs could be considered stranded costs and collected through a distribution fee or an exit fee during any transition to competition. These solutions would ensure that ratepayers or shareholders, not taxpayers, pay the costs of decommissioning. Similar methods could be used to collect these funds even if they were incurred after the transition to

competition. For example, a state public utilities commission could impose a non-by-passable "wires" charge on distribution services to collect decommissioning funds.

C. RECOMMENDATIONS CONCERNING ACTION STEPS

The Department believes that the NRC's proposed five action steps will ensure a reasonable assessment of deregulation's effect on the reliability of decommissioning funds. The Department believes that the third action step is particularly critical. Establishing and maintaining staff-level working relationships with state and federal rate regulators will help ensure needed and timely communications should parties discover that additional steps are required. The Department does not recommend additional requirements at this time.

The public would also be well served if federal agencies took the initiative to ensure the timely, safe and cost-effective centralized storage and disposal of nuclear waste from commercial reactors. The lack of timely temporary storage, as well as the expected lack of timely permanent disposal, imposes costs, uncertainty, and financial risks that could render power plants supplying one-fifth of our nation's electricity artificially uneconomic. The resulting abandonment of otherwise safe and useful generation assets would not only strand the cost of these assets, but also impose additional costs for replacement capacity and energy. No governmental body should cause, condone or fail to take steps to avert waste of such magnitude.

Specifically, the NRC should communicate to Congress, the Administration, licensees, and other stakeholders the possible consequences to the NRC administrative process (e.g., to the Waste Confidence Rule or to the Decommissioning Rule) of the federal government's failure to fulfill its legal obligation to remove nuclear waste from plant sites beginning on January 31, 1998.

Furthermore, the NRC should assess ways of facilitating timely centralized waste storage and the transportation of waste to such a facility. In particular, the Department believes the NRC should clarify and specify the licensing requirements for:

- the construction and operation of a temporary storage site and a permanent waste facility, and
- the transportation of nuclear waste.

IV. CHANGING INCENTIVES FOR NUCLEAR POWER PLANT MAINTENANCE, OPERATION AND SAFETY

Since nuclear power plants are currently operated on a cost-plus basis, licensees have little incentive to cut O&M and safety costs. However, the Department shares the NRC's concern that licensees will have more incentive to cut all of their costs in response to increased competition, perhaps at the expense of safety and adequate long-

term maintenance. Although licensees most likely understand that cutting these costs would generate short-term profits but long-term financial losses, the Department recommends adequate precautions to ensure continued operational safety.

The Department believes that deregulation may require state and federal regulators to develop unique solutions for nuclear power plants. For example, costs related to decommissioning and safety could be regulated on a cost-plus basis. The Department cannot offer specific solutions at this time. We welcome a national dialogue with the NRC, state and federal regulators, and other parties.

As with the potential problem of inadequate decommissioning funding, the incentive to cut safety and O&M costs would be partly mitigated by solving the waste problem. Reducing the need for interim storage of nuclear waste could increase the profitability of existing licensees, thereby reducing their incentive to cut costs in other areas (e.g., decommissioning, safety).

V. RECOMMENDATIONS

The Department concludes that NRC and the states already possess the necessary tools to analyze and promote the safety and financial well-being of nuclear power plants after deregulation. It is imperative that the NRC maintain its strong review process, consistent with its proposal action steps, to ensure that new entities meet their future decommissioning financial requirements.

The Department also believes that the NRC can best facilitate a dialogue among states on how to operate nuclear power plants safely and economically in a competitive environment. The Department encourages the NRC to take a leadership role in this area.

Finally, the Department has been an active member of the Nuclear Waste Strategy Coalition which, among other accomplishments, successfully sued the Department of Energy (DOE) to affirm its obligation to accept nuclear waste beginning in 1998, as required in the Standard Contract. The Department advocates continued pressure on the DOE and federal government to ensure the timely and safe long-term disposal of nuclear waste.