Commonwealth Edison Company
125 South Clark Street
P.O. Box 767
Chicago, IL 60690-0767

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ComEd

December 9, 1996

Mr. John C. Hoyle
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-001

Attention: Docketing and Service Branch

Re: Commonwealth Edison Company Comments on the NRC's Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry

Dear Mr. Hoyle:

Commonwealth Edison Company ("ComEd") offers the following comments on the Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry at 61 Fed.Reg. 49711 (Sept. 23, 1996) ("Draft Policy Statement").

ComEd is the largest operator of nuclear power reactors generating electric power in the United States. All of its nuclear plants are located in the State of Illinois. During the last year, the Illinois legislature has begun an investigation considering reform of current regulation of electric power generation in the state. This past week, legislation was introduced in Illinois that, if passed, would reform the regulatory scheme for electric power generators and suppliers in Illinois and provide for a transition to a competitive market in generation. This proposed legislation provides for separate and continuing recovery of decommissioning costs associated with nuclear power plants.

The U.S. Nuclear Regulatory Commission ("NRC") issued an Advanced Notice of Proposed Rulemaking, Financial Assurance Requirements for Decommissioning Nuclear Reactors on April 8, 1996 ("Advanced Notice"), and ComEd responded with a letter of comments dated June 24, 1996 ("ComEd Comment Letter"). While the scope of the Draft Policy Statement is broader than the Advanced Notice, all of

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ComEd's comments in the ComEd Comment Letter are applicable to the Draft Policy Statement and are incorporated herein by reference.

General

ComEd concurs with the NRC's conclusion that the NRC's current "regulatory framework is generally sufficient to address many of the restructurings and reorganizations that will likely arise as a result of electric utility deregulation." 61 Fed.Reg. at 49713 (Sept. 23, 1996). The restructuring of the electric utility industry, and its transformation from a fully regulated to at least a partially competitive market, will occur over time and should not be permitted to result in major disruptions of existing contractual, regulatory or statutory rights and obligations. The financial implications of radical disruptions of these relations suggest a need for careful deliberation and cautious action.

The issues raised by rate and economic deregulation of the electric utility industry are important, and the NRC is correct in undertaking a systematic approach to reviewing its responsibilities as these changes begin to occur. ComEd applauds the deliberative approach, evidenced by the Draft Policy Statement, with respect to the modification of regulation relating to the financial qualification of licensees and the collection of decommissioning funds. The NRC should continue this issue-specific recognition of the need to continually conform its regulatory oversight to structural changes in licensees and operators to assure the continued safety of the public.

The Draft Policy Statement taken as a whole represents appropriate consideration of several threshold issues that will require resolution as competition increases and the structure of both the industry and regulation change. It is important that NRC policy reflect, as the Draft suggests, moving cautiously but firmly to assure the adequacy of decommissioning funding and to monitor the potential effect of economic deregulation. ComEd agrees that if an entity ceases to be an "electric utility," enhanced decommissioning funding assurance may be required. Such assurance, however, should be defined on an ad hoc basis, since numerous possible new forms of ownership may replace the "utility" owner, and no rule can be drafted now to deal appropriately with such uncertainty. The need is to assure funding, but to do so without accelerating funding, at least where such acceleration would be harmful to the licensee-operator, and, therefore, ultimately detrimental to the public safety. Caution in revising funding requirements is appropriate in developing policy for this transition period. If the present definition of "electric utility" proves to be unworkable because a significant number of licensees cease to

be "electric utilities" under the current definition, ComEd believes that the licensees which are authorized by state or federal economic regulators to recover decommissioning costs should continue to be recognized as "electric utilities" for purposes of NRC regulation under a revised definition.

Similarly, partnering with state and federal economic regulators is a laudable objective, because it furthers the opportunities for the careful and reasoned development of policy, and does so in a manner most likely to produce consistent and complementary procedures, goals and regulations among the multiple regulatory bodies. Such partnerships between the NRC and economic regulators should also, to the maximum extent feasible, avail themselves of all relevant information from the industry itself. Such information is necessary for a complete and an informed analysis of the problems, and the most practical and efficient solutions.

NRC Responsibilities vis-a-vis State
and Federal Economic Regulators

ComEd supports the NRC's position in the Draft Policy Statement that it will take actions to increase cooperation with state and federal rate and economic regulators to promote dialogue and minimize the possibility of actions that would have an adverse impact on safety. ComEd believes that the NRC can play a special role in educating the rate and economic regulators of the need to assure the availability of sufficient funds for nuclear plants to meet health and safety requirements, including decommissioning funds.

One of the significant issues for the nuclear generation industry is the recovery of the capital costs of nuclear plants. There needs to be provision for a revenue stream to provide for the recovery of both the capital costs that are now in the utility's rate base, but have yet to be recovered in full, and decommissioning costs, as a part of any deregulation program. This is a national, and not a local problem. While the method of recovery of capital costs and decommissioning costs from rate payers is not within the jurisdiction of the NRC (and perhaps should not be), the NRC should take a positive position asserting affirmatively and aggressively that such costs must be recovered by utilities. If Congress does not intervene legislatively with a federally-mandated approach to the treatment of these costs in a competitive electric market place, the regulatory bodies should establish a means to collect these costs.

ComEd suggests that among the actions the NRC should consider taking with state utility commissions and the FERC to "minimize the possibility of . . . actions that would have an adverse safety impact" would be to convene a conference, perhaps through the National Association of Regulatory Utility Commissioners, of all interested regulators and take the lead in drafting and proposing standardized language to be adopted by the regulatory commissions providing for the assured recovery of these costs. While the precise method of recovery need not be uniform from state to state or even utility to utility, a policy should be uniformly adopted that recognizes that public safety is dependent upon a stream of revenues adequate to assure the financial stability of licensees. The assurance of such a revenue stream during the transition period to a more competitive market would be one way to satisfy the certainty required by the public interest.

The need for both strandable capital cost and decommissioning funding must be recognized by the economic regulators to satisfy this test. The recovery of capital now invested is essential to ongoing financial market confidence in licensees and operators. Such confidence, in turn, is essential to their access to capital markets, at reasonable costs of money; such access is also necessary to provide for ongoing operations. An assured revenue stream is a necessary pre-requisite to adequate cash-flows for decommissioning funding. As part of its special role, the NRC should work closely with the economic regulators to establish mechanisms for, first, recognizing the need for, and developing, such policies, and, second, implementing them.

Co-owner Division of Responsibility

ComEd recognizes the NRC's concern about the impact of a co-owner's financial difficulty or bankruptcy on the availability of decommissioning funds. Generally, ComEd believes the courses of action the NRC should follow to ensure that decommissioning funds are provided by owners are twofold. First the NRC should strive to create an environment that maximizes the ability of utilities to recover capital costs. The move to a partially competitive market need not result in a marked increase in utility insolvencies if capital cost recoveries are ensured. Second, as to decommissioning funds, the NRC should continue to focus on the assurance of decommissioning funding for all co-owners without generally accelerating funding. The acceleration of decommissioning funding in general could worsen the financial condition of troubled co-owners.

More specifically as to the potential bankruptcy of a financially-troubled co-owner, ComEd does not believe the NRC need take any specific actions. ComEd notes

that no utility bankruptcies to date have presented any problems as to continued funding of decommissioning costs. ComEd believes that the existing legal framework, including the United States Bankruptcy Code, provide sufficient protections for all parties in interest in such matters. While the bankruptcy of a co-owner or contractual purchaser of power may have some financial impact on a licensee during the pendency of bankruptcy proceedings, ComEd believes that this is not an issue that the NRC needs to address in the Draft Policy Statement. The NRC's existing financial assurance mechanisms required for decommissioning are adequate in bankruptcy, ComEd believes, to ensure the availability of such funds for decommissioning uses in the context of a co-owner bankruptcy.

Financial Qualifications Review

ComEd agrees with the Draft Policy Statement that the NRC's existing regulatory framework is generally sufficient to provide reasonable assurance of the financial qualifications of both electric utility and non-electric utility applicants and licensees under various ownership arrangements. However, ComEd questions the need expressed in the Draft Policy Statement to develop at this time additional requirements to ensure against potential dilution of capability for safe operation and decommissioning that could arise from rate deregulation. Virtually every aspect of utility reorganization will be subject to approvals from state public utility commissions, the FERC and, in some cases, the SEC. The range of possible restructurings is so broad that the NRC must take care to avoid conflicts with existing regulatory agencies that have jurisdiction over the restructuring process pursuant to state regulatory statutes, the Public Utility Holding Company Act of 1935 and the Federal Power Act.

The NRC clearly has authority to review and approve transfers of operating licenses, 10 CFR 50.80. While the NRC should review the financial qualifications of license transferees, the NRC does not now have to anticipate in a new rule every corporate configuration that could result from electric utility deregulation. Conditioning license transfers would severely inhibit nuclear utilities' flexibility to reorganize in the evolving industry. By inhibiting nuclear utilities' flexibility, the NRC may, in effect, weaken their competitive position vis-a-vis non-nuclear utilities and make the collection of funds for operation and decommissioning more difficult.

Decommissioning Funding Assurance Compliance Review

The ComEd Comment Letter responded to the questions asked in the Advanced Notice and a copy of the ComEd Comment Letter is attached.

Antitrust Reviews

ComEd agrees that the NRC should know the identity of its licensees and believes that it will as a result of 10 CFR 50.80. Other government agencies have primary responsibility for enforcing the antitrust statutes. Similar to the NRC relationship with state and federal rate and economic regulators, the NRC need not now assume a primary antitrust role with respect to the electric utility industry. It should limit itself to coordinating with those agencies having primary responsibility, reserving the ability to act if the actions of the principal antitrust agencies fail to provide the level of protection required by existing law and the public interest. ComEd doubts, as suggested in the Draft Policy Statement, that a mere change in control, or ownership structure, of a licensee will constitute "significant changes in the licensee's activities or proposed activities," as required by 42 USCA 2135(c)(2), to authorize a new antitrust review by the NRC or the Attorney General.

Conclusion

ComEd believes the Draft Policy Statement is a correctly-measured step in the right direction toward an NRC policy that will assure the public safety during the transition from the industry's past to its future. Several additional issues might be considered as appropriate for consideration throughout the process of developing policy. The first is the special role the NRC can play as an advocate for measures that will assure the industry's ability to bear the financial costs of safety-related responsibilities. While deregulation will create challenges for all sectors of the electric industry, the position of nuclear plant licensees presents a number of important issues that are uniquely within the area of concern of the NRC. On these issues the NRC can make an important contribution to the creation of a deregulated market for electric power that allows nuclear plants to operate without eroding financial assurance.

Second is the need to consider exploring with other regulators and with Congress legislative changes that might accomplish several salutary purposes. The NRC should be prepared to advocate to Congress and state legislatures methods which would permit the recovery of capital costs and decommissioning funding during the transition period to a competitive market. The recent act of Congress in P.L.

104-127 of the 104th Congress, 110 Stat. 885, which will make it easier for rural electric cooperatives to have some or all of their nuclear related debt forgiven, favors one type of licensee. Congress should be encouraged to deal fairly with all licensees. For example, federal legislation imposing a national excise tax on all energy generated to fund nuclear decommissioning would be a fair way to provide a national solution to a question of national importance, affecting the national health and safety, rather than providing debt relief to one type of licensee. If debt forgiveness is the preferred Congressional solution, a means should be found to provide similar relief to investor-owned utilities, perhaps through tax credits for the accelerated depreciation or other amortization of nuclear assets.

Clearly the NRC can take the lead, working with NARUC, and perhaps the Department of Energy and other interested stakeholders, in advocating national solutions to what are truly issues of national, not just local or regional, significance. The development of the nuclear power industry was a public policy of the highest national priority in its early years, and the NRC is best suited to take a leading role in finding a national solution to its outstanding unresolved issues.

These and other ideas may not require development in the presently proposed policy statement, but ComEd believes that they deserve consideration in the future, and perhaps in conjunction with the cooperative working relationships with other regulators discussed in the Draft Policy Statement. ComEd remains vitally interested in all of these questions, and anticipates working closely with the NRC and other interested parties to achieve regulatory policies consistent with the need to protect public safety.

Respectfully submitted,

Michael J. Wallace
Senior Vice President

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Commonwealth Edison Company
One First National Plaza
P.O. Box 767
Chicago, IL 60690-0767

ComEd

June 24, 1996

Mr. John C. Hoyle
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Attention: Docketing and Service Branch

Re: Commonwealth Edison Company Comments on the NRC's Advance Notice of Proposed Rulemaking, *Financial Assurance Requirements for Decommissioning Nuclear Power Reactors*

Dear Mr. Hoyle:

Commonwealth Edison Company ("ComEd") offers the following comments on the Advance Notice of Proposed Rulemaking, *Financial Assurance for Decommissioning Nuclear Power Reactors* at Fed.Reg. 15427 (Apr. 8, 1996).

ComEd is the largest operator of nuclear power reactors generating electric power in the United States. All of its nuclear units are located in the State of Illinois. During the last year, the Illinois legislature has begun an investigation considering reform of current regulation of electric power generation in the state. Two small experiments are being conducted which permit certain customers to choose the generating source of their electric power. This legislative and regulatory activity is typical of the current interest in a more competitive electric power generation market place. At this time, however, neither the Illinois Commerce Commission ("ICC") nor the Illinois legislature is considering any specific economic restructuring proposal.

Notwithstanding the state legislative and regulatory activity, ComEd continues to operate as a regulated utility. As such it is collecting monies as permitted by the ICC for deposit into the external decommissioning trust funds as required by NRC rules. ComEd expects to be able to continue to do so regardless of the eventual resolution of restructuring proposals, and

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nothing in the potential restructuring of the industry suggests that it will be impossible to do so. As a result, the NRC need not take any action to assure that ComEd will be able to continue to provide for the funding of its decommissioning costs. The NRC should not take precipitous action now before the outcomes of what may be a five to ten year restructuring process can be known. Such action could have unintended consequences adversely affecting the economic strength of nuclear utilities and their ability to provide needed energy while assuring public health and safety.

The Federal Energy Regulatory Commission ("FERC") on April 24, 1996 in Order 888 (the "Order") required utilities transmitting power across state lines to open their transmission lines to competition, but the Order also recognizes that utilities should be able to recover costs that they had "prudently" incurred, if customers move to another supplier under the new rules. Representatives of FERC and state regulatory commissions have assured the NRC at a hearing in December 1995 of their intentions to ensure that NRC regulations are satisfied and that, specifically, decommissioning cost obligations will not become stranded costs, ie. costs that are not recovered through the price for electricity, transmission or in some other fashion. The NRC should work with FERC and other appropriate bodies to assure that decommissioning costs will in fact be collected in a competitive market place.

In summary, ComEd believes that the NRC should precede in a deliberative fashion with respect to regulatory change related to the collection of decommissioning funds and should not take precipitous action now.

We would be happy to discuss this matter with you.

Very truly yours,

Michael J. Wallace
Senior Vice President
Nuclear Services

Enclosure

Commonwealth Edison Company's Responses to the U.S. Nuclear Regulatory Commission's Inquiries in the Advanced Notice of Proposed Rulemaking for Decommissioning Study at 61 Fed.Reg. 15427 (Apr. 8, 1996) RIN 3150-AF41

A. Timing and Extent of Electric Utility Industry Deregulation

A.1. What is the likely timetable for industry restructuring and deregulations?

The Congressional mandate to develop a competitive wholesale market place for electricity in the Energy Policy Act of 1992, Pub. L. No. 102-486, 100 Stat. 2776 (1992), and developments in regulatory theory and policy have resulted in the issuance by the Federal Energy Regulatory Commission ("FERC") of Order 888 issued on April 24, 1996 in Docket No. RM 95-9-000; 37 CFR Part 37. Pursuant to Order 888, utilities transmitting power across state lines must open up their transmission lines to competition; they must charge competitors no more than they pay for the use of their own lines; they must establish electronic bulletin boards (or other mechanisms) to share information regarding transmission capacity availability; and they should be able to recover costs that they "prudently" incurred if customers move to another supplier under the new rules. Compliance with Order 888, and its impact, will unfold over an extended period of time, and it is impossible to predict the ultimate structure or nature of the wholesale market place. However, regardless of that structure, FERC has made clear that utilities will be able to recover certain costs which might become "stranded" as a result of Order 888.

Over forty states have announced that they are exploring the concept of restructuring the electric industry they regulate, including the implications of implementing broader customer choice competition at the retail level. This activity will refocus regulation to conditions inherent in a more competitive market place.

The subject of restructuring is currently being considered by a legislative committee of the Illinois General Assembly. The Illinois Commerce Commission ("ICC") has permitted two utilities to begin experiments in competition among suppliers in their service areas of the state. At this time, neither the ICC nor the Illinois legislature is considering any specific economic restructuring proposal and no one can predict when Illinois (or other states) will restructure utility regulation and increase competition.

At its hearings on the timing and extent of electrical industry restructuring, representatives of state public utility commissions ("State PUCs") and the National Association of Regulatory Utility Commissioners stated to the United States Nuclear Regulatory Commission ("NRC") that it could take approximately a decade before the majority of retail customers nationwide would be served by a restructured electric service industry. The NRC should not take any precipitous action now before the outcome of the process is known. Such action could have unintended consequences which could adversely affect the economic strength of nuclear utilities and their ability to assure public health and safety.

A.2. Will the electric utility industry go through several phases as it responds to deregulation and other competitive pressures? If so, what will be the likely major changes in business structure that may occur in each phase? Will rates remain regulated at the retail distribution level, with deregulation occurring for generation and transmission? Will retail wheeling become widespread and lead to deregulation of all sectors of the electric utility industry? Or will rates remain regulated at the retail distribution level, with deregulation occurring within the generation and transmission sectors? What will likely be the final structure of the electric utility industry, assuming either partial or full deregulation?

As stated above in A.1, it is impossible to predict precisely the process by which the electrical industry may move towards competition, or the final result. Each state may be different and produce different outcomes with the result influenced by the state's economy, industrial concentration and the political process. In any event, while less uniformity than now exists in the industry is likely, the current uncertainty makes it premature for the NRC to adopt new rules for the assurance and the collection of decommissioning funds. However, the continued regulation of transmission and distribution services, given their natural monopoly characteristics, seems highly likely to continue under any scenario.

A.3. Some States appear to oppose deregulation. Will they be able to maintain their opposition if neighboring States deregulate? What will be the industry structure if some States deregulate more than others? Can a "hybrid" system exist effectively?

The NRC has been advised in its hearings that some states may decide not to permit the creation of a competitive market in their state. However, there is no reason to doubt that a "hybrid" system can exist for some period of time.

B. Stranded Costs

B.1. How will restructuring affect large baseload plants that currently receive rate relief to cover construction costs or have a portion yet to be phased into the rate base? Specifically, what is the probability that and degree to which these costs will be recoverable should a nuclear power plant be deemed to be non-competitive because of high construction costs? What will be the source of operating, maintenance, and capital improvement funds should such a nuclear generator decide to continue operations? What will be the source of funds to prematurely and safely shut down an uneconomic plant? Are transmission access or other surcharges to cover stranded costs likely?

"Stranded costs" are costs included in a utility's rate base but which have yet to be recovered in full, particularly as related to the capital costs of nuclear plants. They are an important issue to the nuclear electric generation industry. While the recovery of capital costs is not within the jurisdiction of the NRC (and should not be), the NRC should take a positive position asserting affirmatively and aggressively that decommissioning costs should be included in the costs that will be recovered by utilities. If Congress does not intervene legislatively with a federally-mandated approach to the treatment of stranded costs in a competitive electric market place, the regulatory bodies (FERC and the State PUCs) should establish a means to collect these costs. The NRC could be helpful in educating the economic regulators of the need to assure the availability of sufficient funds for nuclear plants to meet health and safety requirements.

C. Nuclear Financial Qualifications and Decommissioning Funding Assurance

C.1. If nuclear plants are shut down prematurely, how will licensees who can no longer pass costs through to ratepayers provide for a shortfall of decommissioning funds?

The premise that utilities that prematurely shutdown nuclear plants will no longer be able to recover decommissioning costs through regulation is questionable. ComEd retired its Dresden 1 unit in 1985 and has collected funds for the decommissioning of this unit in the eleven years since its retirement. Regulation could include collection through rates or other regulatory, but competitively neutral, mechanisms. Nuclear utilities have proven to the State PUCs that in certain circumstances it is economically beneficial to their customers to shut down nuclear reactors prematurely. If nuclear utilities were not allowed by State PUCs to collect decommissioning funds on nuclear plants that

are otherwise uneconomic to operate, utilities might not make the appropriate economic decision. Therefore, State PUCs can be expected to allow continued decommissioning funding for prematurely shut down reactors to insure that utilities make proper economic decisions. ComEd believes that the ICC will continue to require that decommissioning costs be collected in Illinois, regardless of future regulatory changes. So long as a public utility is provided with a reasonable expectation that it can recover these costs, no additional assurances on the availability of decommissioning funding should be required by the NRC.

C.2. At what point does an operator of a nuclear power plant cease to be a "utility" as defined in § 50.2 of the NRC's regulations?

Under 10 CFR § 50.2 an "electric utility" is defined as:

> [A]ny entity that generates or distributes electricity and which recovers the cost of electricity, either directly or indirectly through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing are included within the meaning of "electric utility."

The NRC regulations (10 CFR §§ 50.75(e)(1)(ii) & (e)(3)) specifically allow an "electric utility" to provide financial assurance for funding the decommissioning of a nuclear power reactor through systematic payments into an external sinking fund. If the word "rates" in the definition means "prices," in almost any likely competitive market place for electricity, the price charged for electricity will be established either by a regulatory process or directly by the utility itself. Therefore, almost any current nuclear utility will remain an "electric utility" under the current definition even in a competitive market place.

As it applies to decommission funding, the term "electric utility" should be construed to include all entities that have been specifically authorized by a State PUC, the FERC, or other governing entity to recover projected decommissioning costs from customers in a competitive market place or ratepayers under a regulatory construct. The method by which an "electric utility" recovers the funds is not important. This recovery may occur through a mechanism created to recoup "stranded costs" or by other means. Thus, the NRC should continue to apply the term "electric utility" as it has in the past.

C.3. If an electric utility reorganizes itself, including divesting parts of itself, so that the remaining entity operating a reactor is no longer regulated by a rate-setting State or Federal body, or will cease to be regulated by a rate-setting State or Federal body if the reactor ceases operation, would it be appropriate to require financial assurance for the decommissioning costs in full prior to NRC approval of such reorganizations? Such assurance could take the form of self-guarantee, parent company guarantee, certification by the rate-regulating entity, or other financial surety mechanism to cover the unfunded decommissioning costs. Should the NRC require additional assurance for adequate funds for safe operation and decommissioning in anticipation of deregulation? Should the NRC require, as a condition of approval of certain reorganizations involving the transfer of control of a nuclear power plant, that newly created organizations or holding companies sign a binding agreement that holds them jointly liable for decommissioning costs associated with that nuclear power plant? What would be the impact of such actions?

It is premature for the NRC to consider what specific financial assurances are necessary to provide adequate funds for decommissioning costs in anticipation of deregulation since the structure and timing of a competitive industry are far from clear. Requiring further assurance in the form of an additional guarantee or advancement of decommissioning collections at this point may inhibit the competitiveness of the nuclear generation industry and may be completely unnecessary if decommissioning costs are properly recovered in a restructured environment. There is no single, appropriate method that could stipulate how decommissioning funds should be collected without unnecessarily creating a financial burden, at least in the short term, for some of the licensees, placing them at a competitive disadvantage.

Moreover, the NRC should not condition license transfer approvals by holding the newly created organization jointly liable for decommissioning costs. Conditioning license transfers would severely inhibit nuclear utilities' flexibility to reorganize in the evolving industry. By inhibiting nuclear utilities' flexibility the NRC may, in effect, weaken their competitive position vis-a-vis non-nuclear utilities, thus making decommissioning costs more difficult to collect. The NRC does not now have to anticipate in a new rule every corporate configuration that could result from electric utility deregulation.

Virtually every aspect of a utility reorganization will be subject to approvals from State PUCs, the FERC and, in many cases, the Securities and Exchange Commission. The range of possible restructurings and the required regulatory approvals is so broad that the NRC must take care to avoid

conflicts with existing regulatory schemes that will govern the restructuring process. This can be done by working with these other agencies, rather than independently, to assure that the NRC's interest in the public health and safety is one of the many issues given appropriate consideration by those bodies. Independent NRC regulations purporting to control reorganizations would be both unnecessary, impractical and unwise. Regulatory efficiencies require a cooperative process among all interested regulatory bodies.

The NRC should work with the appropriate regulatory and legislative bodies regarding the transition to a competitive nuclear generation market place, taking a strong stance that decommissioning costs must continue to be recovered from consumers in a competitive generation market place.

C.4. Should the NRC require a licensee to provide a reasonable assurance of the availability of funds for decommissioning by imposing a minimum level of net worth cash flow, or other financial measure (similar to 10 CFR Part 30, Appendices A and B)? If below the minimum levels, the licensee would no longer be allowed to accumulate decommissioning costs over remaining facility life, but would need a guarantee that funds would be available for decommissioning through various financial measures. What financial measures would be effective and reasonable?

The concept of imposing a minimum level of net worth, cash flow, or other financial measure as a mechanism to guarantee financial assurance is inappropriate. Most utilities provide financial assurance through a sinking fund approved by their regulators. If nuclear generation remains an important ingredient in the competitive market place, there is greater assurance that decommissioning funds will be collected. Indeed, a condition precedent to a competitive generation market is the assurance of continued decommissioning collections.

The NRC requires licensees to provide reasonable assurance of the availability of funds for decommissioning. However, the NRC should not dictate the method of providing that assurance. It is neither necessary nor appropriate for NRC to establish specific quantitative financial performance criteria necessary for nuclear power plants to assure collection of decommissioning funds. The assurance should be measured by performance of the decommissioning trust funds as compared to the assumptions made in individual decommissioning funding plans. The assurance of the adequacy of the fund will result from a combination of the licensee's funding mechanisms and the NRC's ability to require reviews and reports and, when necessary, the appropriate adjustment of the assurance components.

C.5. Would PUC and FERC be willing to certify that licensees under their jurisdictions, both electric utilities and Part 50 licensees other than electric utilities, would be allowed to collect sufficient revenues through rates to complete decommissioning funding?

This question is best answered through a direct dialog with affected State PUCs and the FERC.

C.6. What would be the impact if the NRC required licensees to accelerate collection of decommissioning funds such that decommissioning funding for all plants would be complete within ten years (or some other time period).

If the NRC insists on accelerating the collection of decommissioning funds, the artificially imposed costs and associated price increases will only serve to make power generated by nuclear facilities less competitive. Depending on the extent to which these funds have already been collected, accelerating decommission funding could adversely affect the economic health of a utility, and possibly business decisions relative to the continued operation of nuclear power plants. Premature collection of these funds will benefit tomorrow's rate payers at the expense of those that are currently purchasing electrical power. Accelerating the funding of projected decommissioning expenses is not appropriate.

C.7. Assume that licensees have accumulated funds that are determined to be adequate based on current estimates of decommissioning costs. If these estimates turn out to be low far in the future (for example, if final dismantlement occurs after a 50-year safe storage period), how will underfunding be remedied? What measures should the NRC consider for obtaining assurance of funds for such situations? Should the NRC require larger contingency factors in estimates to cover such situations?

The rate of decommissioning fund collection should be based on current cost estimates for decommissioning. There is a reasonable probability that future cost estimates of decommissioning will decrease, rather than increase. As the costs of disposal of low-level wastes have dramatically increased in the last several years, innovation and new technology have significantly reduced the volumes of low-level wastes generated at the operating plants. It is safe to assume that the ultimate disposal volumes of a decommissioned plant will be reduced from current estimates. The Commission should continue to allow the re-estimation of the cost of decommissioning and adjust the rate of collection, or associated assurances, based on the latest

estimate, up or down as conditions change. Such adjustments are preferable to requiring larger contingency factors in estimating future costs. This approach should be applicable both during plant operation and post-operation.

C.8. Would it be feasible for the nuclear industry to develop a captive insurance pool to pay for decommissioning funding shortfalls that result from premature decommissioning? Could such a pool be structured similarly to Nuclear Mutual Limited (NML) and Nuclear Electric Insurance Limited (NEIL), who currently insure on-site property damage and replacement power of member utilities?

It may be possible for the nuclear industry to develop pooling programs, including insurance pools, to pay for decommissioning funding shortfalls that result from premature decommissioning. Many potential issues would have to be addressed and resolved before concluding that such an approach is feasible. Such issues include, but are not limited to, anti-trust concerns, the impact of such an approach on a competitive market place, equity among participants, and tax implications. If a pool were to be created, consideration must be given to the fact that decommissioning costs differ from region to region and from utility to utility depending upon the utility's ability to minimize full life cycle costs. As described in the response to C.1, most prematurely decommissioned plants arise from economic, not technical, conditions. A pool to cover decommissioning shortfalls should not motivate utilities to close nuclear plants when it otherwise would not be economical to do so or State PUCs to disallow the recovery of decommissioning costs in reliance on the existence of the pool. Finally, a pool might increase the cost of generating electricity with nuclear power because utilities would need to recover both the full decommissioning collections and the insurance premium from customers.

C.9. If PUC or FERC oversight is either substantially limited or eliminated, are there any other options for financial assurance of decommissioning that the NRC should consider?

ComEd encourages the NRC to follow the path suggested in the answer to C.3 above. There are numerous other options by which financial assurance for decommissioning can be provided. However, the NRC need not accept the burden of attempting prematurely or preemptively to identify them all. Restructuring will occur in different ways from state-to-state (and perhaps not at all in some states), and the corporate configuration of plant owners could be as varied as the number of licensees. All of this will present a multitude of opportunities and options that have not yet been recognized. The ingenuity that free market fosters

should not be thwarted by confining prescriptive requirements as to how to meet a set of objectives.

D. Decommissioning Funding Assurance and a Federal Government Licensee

D.1. Section 50.75(e)(3)(iv) provides that an electric utility which is a Federal Government licensee need only provide assurance in the form of a statement of intent indicating that decommissioning funds will be obtained when necessary. Since a Federal utility licensee will likely be confronted with many of the same new competitive pressures as non-Federal utilities, the question arises, should the regulations continue to permit the provision of a statement of intent as the method by which these licensees provide financial assurance for decommissioning. There is, for example, no Federal law which clearly provides that the Federal Government would pay the Tennessee Valley Authority's financial decommissioning obligations should TVA be unable to do so. Does this fact or any other factors militate for or against allowing Federal utility licensees to continue to use statements of intent as the method by which financial assurance for decommissioning is provided?

The NRC should consider the degree of assurance of adequate funds needed for the safe decommissioning for all U.S. nuclear power plants, regardless of the type of entity that owns the plant. The requirements imposed to achieve that assurance, however, must recognize that there will be a number of acceptable ways to accomplish that goal. There are other options available to a government licensee than an investor-owned utility. If the option selected meets the level of assurance criteria established by the Atomic Energy Act, then the option should be available to all licensees. All licensees should be treated equitably, and any regulation should not provide one group of licensees with an economic advantage over another unless required to protect health and safety.

E. Status of Decommissioning Trust Funds During Safe Storage Period

E.1. What real rates(s) of return should the NRC allow licensees to use as credit for earnings on the decommissioning trust funds during the extended safe storage period?

ComEd commends the NRC for acknowledging that decommissioning funds will earn real positive after-tax rates of return during the safe storage period. Rather than quantifying a single allowable rate of return, the NRC

should define the basis for allowing a licensee to take credit in its decommissioning funding plan for a rate of return during the safe storage period. A mechanism could be established whereby the assumed rate of return could be tied to a menu of criteria with varying levels of restrictions. Real (inflation adjusted) returns for long term Treasury and corporate debt and the S&P 500 common stock index have exceeded 8% for the ten year period and 3% for the 20 year period ending in 1992. This experience justifies allowing licensees to assume a positive rate of return during a safe storage period.

E.2. What time period(s) should the NRC allow licensees to use in estimating the credit for earnings on the decommissioning trust funds during the extended safe storage period?

The time period which licensees use in estimating the credit for earnings on decommissioning trust funds should match the expected safe storage period. If a utility plans a safe storage period of 50 years past the shutdown of its nuclear reactor, the utility should perform a full life analysis which assumes that trust fund investments match the time duration for settlement of the decommissioning event. For example, if a decommissioning liability is not expected to occur for thirty years, decommissioning investments in common stocks or long-term bonds are reasonable. However, when the horizon shortens the investment strategy may change to recognize the shorter duration to satisfy the decommissioning liability. Utilities should continue to realize positive after-tax real rates of return on decommissioning funds as the safe storage period is nearing its end, albeit at a somewhat lower rate than when invested over a longer time horizon.

F. Reporting on the Status of Decommissioning Funds

F.1. What information should the NRC require to be included in the period reporting requirements?

The NRC should not act precipitously and establish periodic reporting obligations at this time. The Financial Accounting Standards Board (FASB) is reviewing the nuclear industries accounting practices for decommissioning costs. The FASB has proposed that utilities report the following information regarding decommissioning obligations in their financial statements:

a. A description of the closure or removal obligations and of the related long-lived assets;

b. The liability for closure or removal obligations recognized in the financial statements (on the face of the statement of financial position or in the notes to financial statements);

c. All assumptions that are critical to estimating the future cash outflows and the liability recognized in the financial statements, including:

(1) The current cost estimate of closure or removal obligations;

(2) The estimated long term rate of inflation used in computing the liability;

(3) The estimated total future cost of closure or removal obligations;

(4) The discount rate(s); and

(5) The general estimated timing of closure or removal activities;

d. The funding policy for closure or removal obligations;

e. The fair value of assets, if any, dedicated to satisfy the closure or removal obligations;

f. The effects on the reported liability and capitalized costs of closure or removal activities resulting from changes in the current reporting period in the estimated future costs of closure or removal activities;

g. The individual components of the costs of closure or removal activities recognized in the statement of operations (depreciation, changes in the present value of the liability due to the passage of time, and investment earnings on any dedicated assets) and the total of those costs; and

h. The caption or captions in the statement of operations in which the costs in (g) are aggregated if those costs have not been presented as a separate caption or reported parenthetically on the face of the statement.

Proposed Statement of Financial Accounting standard No. 158-B, "Accounting for Certain Liabilities Related to Closure or Removal of Long-Lived Assets" Exposure Draft at 7-8 (Feb. 7, 1996).

While the final form of the FASB standards for disclosure of nuclear decommissioning liabilities remains uncertain, ComEd believes that the standard ultimately adopted by the FASB will provide the NRC with sufficient information to monitor utility contributions into the decommissioning trust funds and the decommissioning cost estimates. If the NRC unilaterally establishes reporting obligations, it may inadvertently create burdensome and possibly conflicting record keeping requirements. The NRC should defer the

creation of any reporting obligations until it can accurately assess whether the information provided to the financial community and available to NRC satisfies its needs.

F.2. How often should the NRC require licensees to report on the status of decommissioning funding?

As indicated above, ComEd believes that it is premature for the NRC to establish a specific reporting obligation on the status of decommissioning funds.