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December 6, 1996

OFFICE OF THE SECRETARY
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Mr. John C. Hoyle
Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DOCKET NUMBER
PROPOSED RULE **PR 50**
(61 FR 49711)

Attention: Docketing and Service Branch

RE: NRC DRAFT POLICY STATEMENT ON THE
RESTRUCTURING AND ECONOMIC DEREGULATION
OF THE ELECTRIC UTILITY INDUSTRY

Dear Mr. Hoyle:

These comments are submitted by Public Service Electric and Gas Company ("PSE&G") in response to the Nuclear Regulatory Commission's ("Commission or NRC") Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, which was published in the Federal Register on September 23, 1996. Comments were requested by December 9, 1996.

PSE&G is an electric and gas utility company that serves 1.8 million electric retail customers in the State of New Jersey. PSE&G is a co-owner and the operator of the Hope Creek and Salem nuclear power plants and is a co-owner of the Peach Bottom nuclear power plant. PSE&G holds licenses from the Commission to own and/or operate the above-named nuclear power plants and is subject to the Commission's regulations. Accordingly, PSE&G has a substantial interest in this Draft Policy Statement and requests that the Commission give careful consideration to its comments submitted herein.

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The power is in your hands.

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PSE&G applauds the Commission's efforts in this Draft Policy Statement to solicit input on its future policy as it considers its next steps in providing guidance on issues pertaining to electric utility restructuring and economic deregulation. The Commission has a vital role to play in this process in order to assure continued protection of public health and safety, and it is to be commended for its foresight in considering implications of these developments.

PSE&G agrees with and supports the overall approach outlined in the Draft Policy Statement, particularly the five steps outlined therein in Part III. Overall, PSE&G believes the NRC's current authority and its regulatory framework are sufficient for it to continue to provide necessary reasonable assurance of financial qualifications and to deal with most any situation arising from deregulation and restructuring activities at the state or federal level.

While there has been an increasing level of public dialogue, the electric industry restructuring is still in its relatively early stages and the ultimate structure of the industry cannot be predicted. There is no basis at this time for the Commission to conclude that utility nuclear plant licensees will be unable to provide adequate financial assurance for operating funds or decommissioning as the restructuring moves forward.

Based on what we have observed to date, the electric industry restructuring should not entail a loss of jurisdiction by state and federal regulatory authorities that would make them unable to provide for the recovery of funds for decommissioning from electric consumers. Although electric industry restructuring will result in some current utility services being provided on an unregulated basis, many services will remain regulated and PSE&G anticipates that economic regulation will continue to play an important role in the industry. Therefore, the same regulatory bodies that currently allow for the collection of the funding of decommissioning through electric rates should continue to have the authority to provide for the recovery of these costs from electric consumers.

At present there is no reason for the Commission to modify its regulations on the assumption that state and federal regulators will fail to continue to act responsibly to ensure the availability of decommissioning funds through fees imposed on electric consumers. A responsible restructuring plan must include recognition of the need to provide for this future liability, and those Commissions that are at the forefront of industry restructuring have provided assurances that they will do so.

For example, the California Public Utilities Commission ("CPUC"), has made clear in its restructuring orders that it intends to ensure that nuclear safety commitments are met in the future.

The cost of future decommissioning of nuclear facilities requires special consideration. These costs require a significant amount of capital, and we will ensure that adequate funds continue to be collected to cover the costs of nuclear decommissioning. Therefore, we will continue to oversee and monitor the existing trust funds to ensure that they are adequately maintained.

Re: Proposed Policies Governing Restructuring in California's Electric Services Industry and Reforming Regulation, 166 P.U.R. 4th 1, 53 (Cal. Pub. Utils, Comm'n. 1995).

Similarly, the New York Public Service Commission stated in its May 20, 1996 restructuring decision that "[n]uclear plants may require special consideration because of... the uncertainty of future cost obligations such as decommissioning." *In the Matter of Competitive Opportunities Regarding Electric Service, Docket No 94-E-0952, et.al., Opinion No. 96-12, App. C, p. 2 (N.Y. Pub. Serv. Comm'n. May 20, 1996).*

In jurisdictions in which PSE&G has an interest, it will vigorously pursue rules for deregulation that adequately assure recovery of the cost of these obligations. PSE&G anticipates that

regulators in other states will similarly recognize the public interest associated with meeting these obligations as industry restructuring proceeds.

Similarly, the Commission can and should take a proactive role in relevant proceedings by making its views known to state and federal regulators. Since the Commission has a strong interest in this area, its views should be aired and addressed before decisions are made regarding the future of the industry. This is particularly true with respect to decisions regarding the recovery of decommissioning costs and other nuclear plant related capital and operating costs, which may have to be recovered from electric consumers through non-bypassable transition charges. We firmly believe that the Commission, with its mandate and expertise in the area of nuclear regulation, would carry considerable weight in these proceedings, and that it therefore has the opportunity to have a positive effect on the outcome.

Consequently, the NRC should play an important role in ensuring its concerns are properly addressed during the transition by participating as necessary and appropriate in restructuring proceedings and by maintaining a dialogue with state utility commissions, NARUC, FERC and the SEC. There should also be dialogue with appropriate Congressional leadership during the 105th Congress since there is much discussion about legislation in the next session.

Ongoing monitoring of actions in states which could undertake approaches that potentially affect the Commission's standards is certainly appropriate under the circumstances. Since it is still rather unclear how this restructuring process might proceed, we support the Commission's approach to continue to evaluate the need for additional requirements. If such instances arise, NRC communication of agency concerns with those states and/or affected companies could go a long way toward initiating responsive dialogue to resolve such issues. Absent a positive response, the NRC

currently has the necessary authority pursuant to 10 CFR 50.80 to review any proposed license transfer.

One of the problems embedded in the deregulation and restructuring debate is the fact that many of the nuclear power plants in the nation are high cost plants. In some regions of the country, particularly the Northeast and the West Coast, decisions to construct these nuclear plants were based on environmental concerns and the need for fuel diversity and were supported by regulators who agreed on the need. In much of the current debate on deregulation and restructuring, these considerations seem to have been lost in the rhetoric about why these plants were built.

As a result, there are significant financial risks which many nuclear utilities face relative to future treatment of these investments as a result of changing regulatory policy at both the state and federal level. Obviously, the NRC in developing this Draft Policy Statement is aware of and interested in this situation and its potential.

Currently, there is much debate in the Northeast on regional air problems, particularly ozone non-attainment in the Northeast corridor. In fact, there is now a well-developed body of evidence to support the conclusion that these problems are exacerbated by emissions from older, dirty coal-fired generating plants to the west and southwest of the Northeast region, the emissions from which plants are transported into the Northeast via prevailing winds.

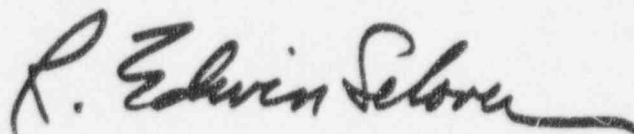
Nuclear plant operators in the Northeast and their customers are in effect economically subsidizing this dirtier generation. This occurs because the Northeastern plants must meet more stringent local environmental standards than plants located in the Midwest, which means higher prices. This also means Midwestern plant operators may sell power into the Northeast region at prices lower than they otherwise would. By having more stringent

environmental standards in the Northeast, this region has provided economic incentives to the Midwestern generators to sell more power into the Northeast, thereby increasing environmental compliance costs to New Jersey businesses and residents. As Midwestern plants gain greater access to Eastern markets, this subsidy and price disparity will only increase, thereby putting greater economic pressure on Northeastern nuclear plant operators. Consequently, the environmental and fuel diversity value of the nuclear units will be short changed. What is needed are national environmental standards applied to all electricity generators.

The NRC could add significant value to the dialogues going on at both the federal and state levels by articulating its views in appropriate forums on the need for nuclear power and on the value it provides from both environmental and fuel diversity perspectives. Additionally, the NRC should become an advocate for the fair treatment of the costs associated with these plants and for the necessary recognition of their value from an environmental and fuel diversity, as well as safety, perspective. We firmly believe that the NRC's participation on behalf of the industry would make a positive difference in the outcome of these proceedings to the benefit of the nuclear industry and its recovery of plant and decommissioning costs on a secure basis.

PSE&G appreciates the opportunity to provide its views on the Draft Policy Statement and looks forward to working on these issues with the Commission in the future. If additional information is required or a discussion would be helpful, please call me at the above number.

Very truly yours,

A handwritten signature in black ink, reading "R. Edwin Selove". The signature is fluid and cursive, with a long horizontal stroke at the end.