



ENTERGY

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Donald C. Hintz
President
and Chief Executive Officer

February 7, 1997

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

DOCKET NUMBER
PROPOSED RULE **PR** 50
(61FR49711)

ATTN: Docketing and Service Branch

Subject: Entergy Operations, Inc. Comments to The Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry

Reference: Federal Register Volume 61, Page 49711, dated September 23, 1996

CNRO-97/00001

Dear Mr. Hoyle:

Entergy offers the following comments to the Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry (Draft Policy Statement).

Entergy believes that the Nuclear Regulatory Commission and other regulatory authorities need to focus on the adequacy of nuclear decommissioning funding now. Decommissioning funds are already underfunded, and are in danger of becoming even more underfunded with the advent of an unregulated, competitive environment. The NRC should act immediately to assure the continued funding of decommissioning obligations, regardless of the pace of restructuring.

Entergy strongly supports the NRC's plans to increase dialogue and cooperation with Federal and State rate regulators to encourage ratemaking that provides assurance for adequate recovery of decommissioning funds. Entergy believes that federal action safeguarding the funding of federal decommissioning obligations should be taken, because of the critical public health and safety goals decommissioning addresses, and because of the role federal policy played in inducing the construction of nuclear power reactors.

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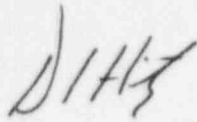
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Mr. John C. Hoyle
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Entergy advocates that the Commission take an active role in educating Congress and the states of the importance of the decommissioning obligations that the Commission has established.

Entergy appreciates this opportunity to comment on the Commission's proposals. Should the Commission have any questions regarding these comments, please contact me at (601) 368-5290.

Very truly yours,



DCH/sh
Attachment

cc:

Mr. J. L. Blount
Mr. L. J. Callan
Mr. J. G. Dewease
Mr. J. N. Donohew
Mr. C. M. Dugger
Mr. J. Hagan
Mr. C. R. Hutchinson
Mr. J. D. Jackson
Mr. G. Kalman
Mr. J. R. McGaha
Mr. R. B. McGehee
Mr. C. P. Patel
Mr. N. S. Reynolds
Ms. C. C. Shanks
Mr. H. L. Thomas
Mr. D. L. Wigginton
Mr. J. W. Yelverton

I. INTRODUCTION

Pursuant to the Nuclear Regulatory Commission's (NRC's) September 23, 1996, request for public comment, Entergy welcomes the opportunity to respond to the NRC's Draft Policy Statement concerning its expectations for, and intended approach to, power reactor licensees during the restructuring of the electric utility industry. 61 Fed. Reg. 49711. In the Draft Policy Statement, the NRC raises concerns regarding the potential adverse effects that utility restructuring involving power reactor licensees could have on the long-term adequacy of decommissioning funds. Entergy shares the NRC's concerns as to the negative impact restructuring could have. Entergy supports immediate action by the NRC, as discussed below, to assure continued protection of public health and safety, regardless of the pace of electric utility industry deregulation and restructuring.

The present level of decommissioning funds currently being collected presents a significant problem which the advent of a new, competitive industry structure threatens to exacerbate. On an aggregate national basis, utility decommissioning trust funds are funded at approximately 25 percent, while nuclear plants have completed 43 percent of their original licensed service lives. In dollar terms, the funds contain only \$9 billion, while projected decommissioning costs are \$35 billion. The underfunding arises from a number of factors, including increased decommissioning cost estimates, unanticipated inflation, lower than expected revenue growth due to loss of load from customer exodus, lower investment returns, rate settlements, and the ratemaking delays that result in a lag in collecting funds.

In addition, the recovery method of most funds are "back-end loaded." That is, they are designed to generate much larger contributions to the fund in the later years of a plant's operating license. If circumstances never changed, this approach was intended to produce funding sufficient to safely decommission a plant at the expiration of its license. However, circumstances have already changed dramatically, and more changes are anticipated. As a result, early underfunding of the decommissioning obligations, on top of the underfunding discussed earlier, could force much higher back-end contributions, making the collection of decommissioning funds in a more competitive environment potentially impossible to obtain from traditional sources. Entergy urges the NRC to act now, by working with the nuclear industry, state regulatory agencies, the Executive Branch and Congress, to assure adequate funding of the federally mandated nuclear decommissioning obligation, regardless of the nature and timing of electric utility restructuring.

II. COMMENTS TO SPECIFIC ISSUES RAISED

A. The Advance Notice of Proposed Rulemaking

The NRC stated in its Draft Policy Statement that while it believes the existing decommissioning funding assurance provisions in 50.75 "generally provide an adequate basis for new licensees to provide reasonable assurance of decommissioning funds," it issued the April 1996, Advance Notice of Proposed Rulemaking (ANPR) to address this issue, as well as others,

"in anticipation of rate deregulation." Entergy filed comments to the ANPR, sharing its concern that restructuring could further jeopardize the already underfunded decommissioning trust funds. Entergy supports the NRC's continued examination of these issues, but stresses that immediate action is also necessary. A copy of Entergy's comments to the ANPR is attached.

B. The Pace of Industry Restructuring and Rate Deregulation

In its Draft Policy Statement, the NRC states that "[a]pproval of organizational and rate deregulation changes may occur rapidly without the NRC's knowledge." The NRC is concerned with situations in which a licensee which once qualified as an "electric utility" under 10 CFR 50.2, would no longer qualify, and would be unable to accumulate adequate funds for decommissioning and for safe operations of its facilities. To that extent, the NRC states that it may exercise direct oversight over the review of restructuring proposals and license transfers, to determine whether such transactions will affect the licensee's status as an "electric utility" and its ability to remain responsible for safe operations and decommissioning.

While Entergy agrees that the electric utility industry is moving quickly towards greater competition and restructuring, Entergy does not agree that organizational changes will occur so quickly in the industry as to happen without the NRC's knowledge. As the NRC itself noted in its Draft Policy Statement, the NRC has required mergers, the formation of holding companies, and the sales of facilities, or portions of facilities, to require prior NRC notification and approval under 10 CFR 50.80. The advent of a competitive industry will not eradicate a licensee's obligation under 10 CFR 50.80, which requires NRC notification and prior written approval of organizational changes which may result in the transfer, directly or indirectly, of a nuclear power reactor license. Under current regulations, the NRC has sufficient and adequate authority to maintain its regulatory oversight over power reactor licensees throughout the duration of the industry's transition.

C. Proposed Reorganizations

In the Draft Policy Statement, the NRC indicates its concern with the current review process for financial qualifications for licensees meeting the definition of "electric utility" in 10 CFR 50.2. While the NRC concludes that the existing regulatory framework is generally adequate to provide reasonable assurance of the financial qualifications of its licensees, the NRC is evaluating which types of transfers and restructurings should be subject to NRC review.

As Entergy stated in its comments to the NRC's ANPR, it may be feasible to add various requirements for approval of reorganizations, which could provide additional financial assurances for decommissioning. However, Entergy believes that such requirements are not the optimal solution for assuring funding of decommissioning obligations in a restructured utility environment. Entergy recommends an alternative to company guarantees of full funding of the decommissioning obligation prior to reorganization. In particular, Entergy recommends the imposition of a non-bypassable wires charge collected from persons receiving electricity within the service area of the current distribution system, to assure there will be adequate funds to cover decommissioning cost obligations at the time they are needed, irrespective of who the licensee is

at that time. Entergy urges the NRC to advocate this legislative solution before Congress and state regulatory agencies. Entergy cautions the NRC not to add financial qualifications requirements that adversely affect licensees' ability to compete, and thereby, undermine the fiscal health of the licensees and their ability to safely operate and decommission their nuclear power plants.

D. Potential Need for Additional Financial Qualification Reviews

In the Draft Policy Statement, the NRC indicates that it is in the process of reviewing additional financial requirements that will help ensure against potential dilution of capability for safe operation and decommissioning that could arise as a result of rate deregulation. Entergy believes that increased competition in the electric utility industry does not necessarily mean that a higher level of financial assurance is required. There are existing financial assurance requirements to ensure the safe decommissioning of nuclear units. Entergy supports tests of fiscal health that can be used as a basis to seek assurance of recovery of funds for the decommissioning obligation through a mechanism such as a non-bypassable wires charge discussed above. However, any tests or additional requirements that would prevent entities that fall below a certain minimum level of fiscal health from collecting funds for the decommissioning obligation over the life of their facilities may harm the very entities that most need assistance.

E. NRC's Relationships with State and Federal Rate Regulators

In the Draft Policy Statement, the NRC states that it will promote working relationships between its staff and the staffs of State and Federal regulators. In addition, the NRC intends to encourage State and Federal regulators to set rates that assure adequate recovery of the funds needed for decommissioning costs and the safe operation of power plants. Furthermore, although recognizing the primary rate authority of State and Federal economic regulators, the NRC reiterates its authority to take actions that may affect a licensee's financial situation when warranted by public health and safety concerns.

Entergy strongly supports the NRC's plans to encourage ratemaking that provides assurance for adequate recovery of decommissioning funds. Entergy believes the NRC's goals of increased dialogue and cooperation with State and Federal rate regulators are important. However, Entergy also advocates that the NRC play an active role in ensuring the collection of adequate funds for decommissioning through continued rate recovery in a restructured industry.

F. Current Regulations and the Need to Go Further

Although in its Final Rule, Order 888, Promoting Wholesale Competition Through Open Access Non-Discriminatory Services By Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, the Federal Energy Regulatory Commission (FERC) states that it intends to allow the recovery of all legitimate and verifiable "stranded costs" that result from the transition to competition, Order 888 does not directly address the issue of decommissioning costs. Decommissioning costs are not "stranded costs." While stranded costs

are known and measurable costs that have already been incurred, nuclear decommissioning costs are an obligation that is not fully known, and will not be incurred, until the time when the nuclear plant ceases to operate. Thus, while Order 888 allows recovery of those investments stranded as a result of deregulation, it does not adequately address the problems nuclear licensees face with their decommissioning obligations in the advent of a competitive environment. In order to directly address this issue, Entergy would support a proposal that would provide for the following procedure:

1. A utility that believes its decommissioning obligation is underfunded could seek a determination by the NRC;
2. If the NRC deems the current funding to be inadequate, the NRC would issue an Order noting the deficiency;
3. The costs for decommissioning funding necessary to meet the NRC's adequacy determination would be deemed "just and reasonable" under the Federal Power Act (FPA).
4. For decommissioning costs collected in retail rates, the utility could then present the Order to its state regulatory authority to grant full faith and credit to the NRC's finding and to modify its ratemaking for the utility, accordingly;
5. If the state PUC does not provide for adequate recovery of decommissioning funds pursuant to the NRC's Order, the utility would seek to enforce the NRC's Order at the FERC or in Federal Court;
6. Upon its determination that the state's action is insufficient to correct the deficiency identified by the NRC, and pursuant to the NRC's findings, the FERC or Federal Court would be required to provide for recovery of the inadequate decommissioning funds through rates.
7. For decommissioning costs collected in wholesale rates, the NRC's finding would be presented to the FERC. The FERC would modify its ratemaking, accordingly. If the FERC did not act to enforce the NRC's Order, the utility could seek review in the Federal Court of Appeals.

III. CONCLUSION

Decommissioning obligations are federally mandated, are a matter of compelling federal interest, and are vital to the protection of public health and safety. Entergy fully supports the NRC in ensuring the safe operation and decommissioning of the nation's nuclear power plants. The threat that power reactor licensees face in their ability to collect funds for the decommissioning obligation is immediate. It is crucial that the NRC take action to assure that decommissioning obligations are immediately addressed irrespective



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Donald C. Hintz
President
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June 24, 1996

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

ATTN.: Docketing and Service Branch

Subject: Entergy Operations, Inc. Comments on Financial Assurance Requirements for
Decommissioning Nuclear Power Reactors

Reference: Federal Register Volume 61, Page 15427, dated April 8, 1996

CNRO-96/00011

Dear Mr. Hoyle:

Entergy offers the following comments on the Advance Notice of Proposed Rulemaking ("ANPR"), "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors."

Entergy supports the Commission's efforts to update and, if necessary, supplement its regulations at this time of approaching competition in the electric utility industry. Entergy believes that the Nuclear Regulatory Commission and other regulatory authorities need to focus on the adequacy of nuclear decommissioning funding now. The industry is moving now toward a new, competitive environment. The Commission should act now to protect the funding of decommissioning obligations and not wait to learn exactly when the industry will become fully competitive or what structure the various utilities may adopt to meet the competition.

Entergy believes that federal action to safeguard funding of federal decommissioning obligations should be taken, because of the critical public health and safety goals decommissioning addresses and because of the role federal policy played in inducing the construction of nuclear power reactors.

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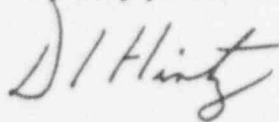
Mr. John C. Hoyle
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Although Entergy does not believe that the Commission needs to change the level of financial assurance required, Entergy believes that it is crucial that the Commission focus on assuring that the existing levels of decommissioning obligations it has set are adequately funded.

Entergy encourages the Commission to take a lead role in educating Congress and the states of the importance of the decommissioning obligations that the Commission has established. Entergy also suggests that the Commission could also play a role in assuring collection of the appropriate funding for the decommissioning obligations it has established by determining whether recovery through rates of funding to meet the decommissioning obligation is adequate.

Entergy appreciates this opportunity to comment on the Commission's proposals. Should the Commission have any questions regarding these comments, please contact me at (601) 368-5290.

Very truly yours,

A handwritten signature in cursive script, appearing to read "D. Hintz".

D.C. Hintz
DCH/JGD/cmt

Attachment

cc:

(See Next Page)

Mr. John C. Hoyle
June 24, 1996
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Mr. L. H. Waldinger
Mr. D. L. Wigginton
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NDC (RBS)
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RESPONSE TO THE NUCLEAR REGULATORY COMMISSION'S
ADVANCE NOTICE OF PROPOSED RULEMAKING ON
"FINANCIAL ASSURANCE REQUIREMENTS
FOR DECOMMISSIONING NUCLEAR REACTORS"

I. INTRODUCTION

Entergy welcomes the opportunity to respond to the Nuclear Regulatory Commission's ("NRC") questions concerning financial assurance requirements for nuclear decommissioning, posed in the NRC's April 8, 1996 Advance Notice of Proposed Rulemaking ("ANPR") regarding Title 10, Part 50 of the Code of Federal Regulations. In the ANPR, the NRC raises concerns regarding the effect of the impending restructuring of the electric utility industry on the funding of nuclear plants' decommissioning obligations. Entergy shares the NRC's concerns as to the negative impact restructuring could have on adequate decommissioning funding. While Entergy believes that the growth of competition in the electric industry is desirable, Entergy also believes that the introduction of competition will lead inevitably to some form of restructuring, which, in whatever form it takes, could undermine the current funding mechanism for decommissioning costs. Therefore, Entergy emphasizes in its comments that the NRC should act now to assure continued adequate funding of the federally-imposed nuclear decommissioning obligation, regardless of predictions as to the scope, nature or timing of electric utility industry restructuring. The nuclear decommissioning obligations are known today and action must be taken today to assure the public health and safety with respect to nuclear plants.

The oversight and creation of nuclear decommissioning obligations was, appropriately, established as a federal issue. See Atomic Energy Act of 1954, ch. 1073, 68 Stat.

921. The decommissioning obligation is, for many reasons, a federal mandate; and it is a mandate that is akin to the "unfunded mandates" creating problems in other arenas. Electric utilities constructed nuclear units as a direct result of federal policies and now operate the units pursuant to federal directives. But the authority to provide for adequate funding of the obligations rests primarily with state authorities. The decommissioning obligations mandated by the NRC are a matter vital to the public health and safety and it is incumbent upon the federal government to ensure adequate funding of the decommissioning obligation.

II. ENTERGY'S HISTORICAL PERSPECTIVE

Entergy is composed of a group of companies that own, in whole or in part, a total of 93 generating units, including 5 nuclear units, with a total of 22,604 MW of capacity. The Entergy system provides electric service to approximately 2.4 million customers at wholesale and retail in four states: Arkansas, Louisiana, Mississippi and Texas. The Entergy transmission system is composed of more than 15,200 miles of transmission line, extending from the northern border of Arkansas to the southern-most part of Louisiana and including the western portion of Mississippi and the southeastern portion of Texas. The multistate nature of Entergy's system means that Entergy must deal with five state and local regulatory entities, in addition to the Federal Energy Regulatory Commission ("FERC").¹

¹ Entergy Corporation entities are regulated by five different state and local regulatory agencies as follows: the Arkansas Public Service Commission has jurisdiction over Entergy Arkansas; the Mississippi Public Service Commission has jurisdiction over Entergy Mississippi; the Louisiana Public Service Commission and the Public Utility Commission of Texas have jurisdiction over Entergy Gulf States; and the Louisiana Public Service Commission has jurisdiction over Entergy Louisiana and the Council of the City of New Orleans has jurisdiction over Entergy New Orleans.

Through the 1960's, Entergy's system relied completely on gas-fired generation, not unusual for a utility located in the gas-rich area of the country. Since the 1960's, however, Entergy has been compelled by federal policy to use other fuels for electric generation. Entergy's predecessor began planning the construction of nuclear generating plants in the late 1960's, for operation to begin in the early 1970's. See Middle South Energy, Inc., 31 F.E.R.C. (CCH) ¶ 61,305, at 61,651 (1985).

Entergy's switch to nuclear generation in the late 1960's came as a direct result of increasingly frequent natural gas curtailments, the accompanying change in federal policy, and strategic limitations on the use of oil and gas. Entergy's primary natural gas suppliers, Arkansas Louisiana Gas Company and United Gas Pipeline Company ("United"), began experiencing gas supply problems in the late 1960's. By the early 1970's, full blown curtailment plans were in effect on both pipeline systems. United's supply problems and curtailments were among the most severe and widespread in the gas industry. These curtailments continued through the early 1970's, leading to general concern among utilities regarding long-term gas supplies. The Arab oil embargoes of the early 1970's increased concerns regarding natural gas supplies in two ways: first, by pushing up prices for natural gas as an alternative to oil, and second, by motivating the federal policy to decrease dependence on oil and gas.

By the mid-1970's, curtailment plans restricted the ability of utilities to use natural gas as boiler fuel. Congress codified that policy in 1978 by enacting the Fuel Use Act, which compelled utilities such as Entergy to stop using natural gas as boiler fuel. Instead, federal policy mandated that Entergy take used and useful gas units off line and replace that capacity with other fuel sources by 1990. As a result of the fuel policies starting in the 1960's, Entergy "embarked on a

program to carry out a corporate policy . . . of moving toward a new fuel base of nuclear and coal generation." 31 F.E.R.C. at 61,654.

Pursuant to that corporate policy, Entergy built some coal units, but was subject to regional coal use limitations under the newly enacted (in 1970) clean air laws. Thereby limited as to how many new coal units could be built and how much natural gas could be burned, Entergy completed its five nuclear plants.² The investments in those nuclear plants are directly attributable to Entergy's compliance with changing federal fuel restrictions and curtailments and with environmental policies.

In addition to the asset investments in nuclear capacity, incurred due to federal policies, Entergy also is subject to federal decommissioning obligations. The nuclear decommissioning obligation was established in the context of the current industry structure, in which utilities have an obligation to serve all customers in an exclusive service territory and the rates charged to those customers are regulated by the FERC and state and local utility commissions on a cost of service basis. Under that regulatory compact, funds to ensure safe decommissioning are collected from all ratepayers over the life of the units. The projected costs for decommissioning the existing nuclear generating plants in the United States are approximately \$35 billion, of which only approximately \$8.7 billion have been collected. The advent of a new, competitive industry structure threatens the existing regulatory compact and, thus, the utilities' ability to collect decommissioning costs to protect the public health and the environment.

² Construction of Arkansas Nuclear Unit 1 began in the fall of 1968, while groundbreaking for Arkansas Nuclear Unit 2 began in 1971. The Waterford 3 and Grand Gulf Nuclear Station projects were announced, respectively, on September 16, 1970 and January 21, 1972. The construction permit for the River Bend Station was issued in March 1977.

III. RESPONSE TO SPECIFIC QUESTIONS

A. Timing And Extent of Electric Utility Industry Deregulation

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

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?

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

The pace and scope of change in the electric industry as a result of efforts to introduce competition in the industry are unclear; however, it is certain that changes are taking place more rapidly than expected. Therefore, immediate federal action is needed to ensure continued adequate funding of decommissioning obligations, especially in light of approaching competition, irrespective of the pace, process or form resulting from competition and restructuring.

We know now that the introduction of competition to the electric industry will happen. The FERC recently issued its Final Rule on open access transmission, Order No. 888, "Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities." IV F.E.R.C. Stats. & Regs. ¶ 31,036 (1996). Although the states are clearly not of one mind on the timing and pace of restructuring, 45 states have initiated proceedings examining industry restructuring. Thus, while some states may adopt plans earlier than others, all states eventually will be compelled to move toward competition.

We also know now that restructuring of the electric industry could jeopardize the current mechanism for funding the decommissioning obligation. With the restructuring of the industry to unbundle transmission services from electric generation, utility customers will have the option of moving across the open-access transmission grid to purchase electricity from generators other than those by which they have traditionally been served. If utility customers are allowed to purchase generation from new suppliers, and thereby avoid future payments into the decommissioning trust funds, there will be an increased burden placed on the remaining customers, a decrease in contributions to the decommissioning trust funds, greater financial instability for the licensees and a possible shift of the decommissioning obligation to the taxpayers. Thus, many customers for whom the nuclear plants were built and operated will avoid paying their decommissioning obligations and will shift the burden to other customers or to taxpayers.

Entergy believes it is imperative that the NRC address this issue now. Decommissioning funds already are underfunded, for a variety of reasons, and are in danger of becoming more severely underfunded with the introduction of competition to the electric industry. Electric consumers will be given choices as to the source of the electricity they purchase. The NRC cannot wait to address this issue until the industry has completed its transformation, or the costs of decommissioning will fall disproportionately on a smaller group of ratepayers remaining on the system, or be shifted to taxpayers.

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?

Although costs stranded by deregulation are an important issue to electric utilities, which must be addressed in the process of introducing competition to the industry, Entergy stresses that decommissioning obligations are qualitatively different from other stranded costs and should be addressed separate and apart from other stranded costs.

First, the importance to the public health and safety of funding the decommissioning obligations of nuclear units cannot be ignored. As a matter of federal policy, utilities do not have the option of accepting financial losses on nuclear units and simply abandoning them. The units must be decommissioned, a process that could be financed either through traditional funding mechanisms or, should those fail, through government action. In recognition of the essential role decommissioning plays in protecting the public health and safety, the NRC has established decommissioning obligations for its licensees. Now, the funding of those obligations must be assured.

Second, decommissioning obligations have very different financial characteristics than other stranded costs. Typical stranded investment in assets, such as generating stations and transmission lines, can be lessened through accelerated depreciation and will eventually align with

the market. In contrast, decommissioning costs are a continuing obligation and the funding necessary to meet the obligation will increase and must be collected over the life of the unit.

Should proper recovery of decommissioning costs not be provided for in the restructuring of the electric industry, then as customers leave the system, and load for which the nuclear generation assets that were built is thereby lost, the funding of the decommissioning trust funds may be undermined. Adequate funding of the decommissioning obligation would then have to be paid for by an ever-shrinking customer base or the burden of decommissioning would fall on taxpayers, since the obligations cannot be abandoned. A better solution is for the federal government to assure the continuing recovery of decommissioning costs in utility rates, through non-bypassable fees to be paid by utility customers leaving the system, or other surcharges tied to use of transmission facilities.

Thus far, although the FERC has stated its position that all legitimate and verifiable stranded costs should be recovered in the restructuring of the electric industry, the FERC's mechanism does not sufficiently provide for recovery of decommissioning costs. The FERC's Order No. 888 provides for recovery of wholesale stranded costs through the "revenues lost" approach. The revenues lost method, however, only accounts for and allows recovery of fixed costs already incurred by utilities, presumed to be the entirety of utilities' costs of providing service. This method does not provide for costs that must be collected in the future, over the life of the plant, such as decommissioning costs. Although decommissioning costs are known and must be collected, as a matter of public health and safety, they have not yet been incurred.

Entergy has requested clarification and rehearing of Order No. 888 with respect to four issues, including the special nature of nuclear decommissioning obligations and the need for

special treatment of them to ensure the recovery of the costs necessary for safely decommissioning nuclear units. See Request for Clarification and Rehearing of Entergy Services, Inc., Docket Nos. RM95-8-000 and RM94-7-001 (May 24, 1996). Entergy submits that a more appropriate mechanism for recovering the costs of decommissioning obligations, not reflected in utilities' rates currently or at the time a customer leaves the system, would be non-discriminatory surcharges. *Id.* at 10. Entergy has proposed that each customer be given notice that such charges may be assessed at the time it leaves the system, and that utilities be permitted by the FERC to make rate filings to implement these surcharges on a non-discriminatory basis. *Id.* Entergy encourages the NRC to adopt and support a policy requiring non-bypassable charges to assure collection of adequate decommissioning funds.

The NRC has requested comment on the source of recovery for construction costs and other stranded costs (besides decommissioning costs). Entergy stresses again that decommissioning costs must be treated as separate and apart from other stranded costs. However, Entergy also will comment on a potential means of recovering sunk investment in nuclear generation assets, such as construction costs: through accelerated depreciation.

Some state regulators have begun to plan today for the potential stranding of costs in tomorrow's restructured electric utility industry. These state commissions have allowed accelerated depreciation of nuclear investments, bringing these assets down to a more competitive, market value. For example:

The South Carolina Public Service Commission allowed South Carolina Gas and Electric ("SCG&E") to transfer \$257 million in depreciation reserves to its V.C. Summer nuclear station to mitigate risk for stranded investment. The reserves had originally been booked against SCG&E's

transmission and distribution system. Thus, the transfer of depreciation reserves will effectively write down SCG&E's nuclear investment by \$257 million and write up the company's transmission and distribution assets by the same amount. This adjustment will preserve SCG&E's ability to recover costs through rates from the transmission and distribution system, which will not be subject to the same competition problems as generation. In addition, the Public Service Commission approved a plan allowing SCG&E to recover most of its regulatory assets over 5 years. These had originally been scheduled for recovery over 20 or more years.

Another state commission that has taken a forward looking approach to stranded cost recovery is the California Public Utility Commission, which granted accelerated depreciation to Southern California Edison's investment in the San Onofre nuclear station.

Northeast Utilities has proposed a universal service charge to be levied on all retail customers using Northeast's transmission system after the onset of competition. The charge would cover stranded investment costs, conservation programs, contracts with non-utility generators and nuclear decommissioning obligations.

Entergy encourages the NRC to fully exercise its authority to support these initiatives and help educate the state commissions on the importance of assuring continued, full collection of decommissioning cost obligations.

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?

As a matter of public health and safety, the federal government cannot allow there to exist a "shortfall of decommissioning funds." There is a compelling federal interest in the safe

operation and ultimate decommissioning/decontamination of our Nation's nuclear units. As discussed above, utilities built nuclear generation units in reaction to federal fuel restrictions and curtailments and to clean air policies. Moreover, to insure the protection of the public health and safety, nuclear units cannot simply be abandoned as uneconomic, but must be carefully dismantled and disposed of. Therefore, funding of the decommissioning obligation is critical and must be assured through federal legislation.

Compared to the planned service lives of the nuclear plants, the decommissioning obligations are significantly underfunded. For example, Entergy's nuclear plants are at 36 percent of their expected service lives, but their estimated decommissioning costs are only 13 percent funded. This is not atypical: on an aggregate basis, utilities' decommissioning trust funds currently are funded at approximately 25 percent, or about \$9 billion out of projected total decommissioning costs of \$35 billion, while, on an aggregate basis, nuclear plants have completed 43 percent of their expected service lives. This underfunding arises from a number of factors, including increased decommissioning cost estimates, unanticipated inflation, lower than expected growth due to loss of load and customer exodus, rate settlements and the lag in collecting funds due to ratemaking delays. Most funds are "back-end loaded;" that is, they are designed to generate much larger contributions to the fund in later years. As a result, early underfunding of the decommissioning obligations may force still higher back-end contributions, making the collections unreasonably high and, in a more competitive environment, potentially impossible to collect from traditional sources. This threat to its licensees' ability to collect funds for the decommissioning obligation in a more competitive environment has motivated the NRC to begin examining its financial assurance mechanism. The NRC must recognize, however, the more immediate threat: decommissioning trust funds are

already significantly underfunded and are likely to be jeopardized in the restructuring of the electric industry.

Entergy suggests that the NRC, in its role as regulator of safe nuclear power, take the lead in educating Congress and the states on the importance of the decommissioning obligation.

The NRC could join with its utility licensees to pursue legislation that would ensure that funds to safely decommission and decontaminate nuclear plants will be collected and available when required. Entergy's proposal for such legislation is discussed at greater length in response to question C.5.

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?

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 ratesetting 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?

The NRC's suggestion that it require financial assurance for the decommissioning costs in full, prior to granting approval of reorganizations that result in the nuclear-owning entity not being subject to regulation by a rate-setting state or federal body, is one possibility for assuring funding of decommissioning obligations in a restructured utility environment. Entergy recommends an alternative to company guarantees of full funding of the decommissioning obligation prior to reorganization. In particular, Entergy recommends the imposition of a non-bypassable wires charge from all customers, to assure there will be adequate funds to cover decommissioning cost obligations at the time they are needed.

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 NRC's suggestion that it establish a minimum level of financial soundness for licensees collecting decommissioning costs over the life of the facilities has merit. However, the NRC's suggestion that it would bar entities that fall below that minimum level of fiscal health from collecting funds for the decommissioning obligation over the life of their facilities may not be the optimal solution.

Entergy's concern with the test as propounded by the NRC in this question is that it would deny continuing rate recovery of funding for the decommissioning obligation to those very entities that most require it, because of their financial situation. Unlike levelizing back-end loaded decommissioning costs over the life of the unit, an up-front requirement would be akin to accelerated decommissioning, which Entergy believes could have negative competitive consequences.

If, however, the results of the NRC's proposed fiscal health test could be used as a basis to seek assurance of recovery of funds for the decommissioning obligation through a mechanism such as that discussed in greater detail in Entergy's response to question C.5., then the test could be useful. In that scenario, the test would establish, in addition to the federally mandated decommissioning obligation, a determination by a federal agency that the utility requires assurance of continuing rate recovery of the decommissioning obligation in order to protect the public health and safety.

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

Relying on state public utility commissions and the FERC to allow the collection of sufficient revenues through rates to adequately fund the decommissioning obligation may not be completely adequate. The FERC's recent Final Rule on open access transmission and stranded costs does not adequately address the special nature and importance of decommissioning funds (for a more complete discussion of this problem, see Entergy's response to question B.1.), and, therefore, at this time, does not provide for sufficient revenues to be recovered through rates to complete the funding of decommissioning obligations. Entergy has requested clarification and rehearing of Order No. 888 on this issue, in the belief that the FERC intends that all legitimate and verifiable stranded costs, including decommissioning costs, be recovered in the restructuring of the electric industry.

The FERC, however, has jurisdiction only as to rates for wholesale sales of power generated by nuclear units. More than 80 percent of decommissioning costs are recovered through rates for retail sales, over which state public utility commissions ("PUCs") exercise jurisdiction. Past experience with state PUCs has been inconsistent as to whether state PUCs will be willing to provide assurances that decommissioning costs will be recovered through retail rates and emphasizes the need for the FERC to maintain oversight of this issue. Despite decommissioning cost studies approved by the FERC, state PUCs have previously made adjustments to the amounts of decommissioning costs that could be covered in retail rates.

Leaving the funding decision to state regulators could be particularly problematic for multi-state utilities, that must contend with a patchwork of state rate recovery schemes in safely

operating and planning for the decommissioning of nuclear units. As the various state PUCs propose a variety of approaches to the restructuring of the electric industry, with concomitant differences in the assurance provided for the continuing recovery of nuclear decommissioning costs, multi-state utilities' efforts to assure the NRC of their ability to safely decommission their nuclear units are hindered.

Entergy proposes that the NRC play a key role in securing assurance of continued rate recovery of adequate funding of decommissioning obligations. Entergy would support a proposal that would provide for the following:

A utility that believed its decommissioning obligation is underfunded could seek a determination by the NRC that its recovery through rates of funds for decommissioning is insufficient.

If the NRC determines that the utility's rate recovery for decommissioning is insufficient, the utility could petition its state PUC to grant full faith and credit to the NRC's finding and modify its ratemaking for the utility accordingly.

If the state PUC does not approve a rate design for adequate recovery of funds for decommissioning in line with the NRC's finding, the utility may seek relief from the FERC. Upon its determination that the state's action is insufficient to correct the underfunding problem identified by the NRC, the FERC would be required to provide for recovery through rates of funds for decommissioning, pursuant to the NRC's finding.

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 10 years (or some other time period)?

Entergy does not believe that accelerated collection of decommissioning funds is an appropriate solution to underfunding of decommissioning trust funds. The ultimate amount of costs is uncertain and to accelerate collection would be to risk incorrectly specifying the appropriate amount.

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 NRC should take measures immediately to prevent the underfunding in future years. In the current, regulated environment, utilities are not being allowed by the FERC and state PUCs to collect an adequate amount of funding for decommissioning obligations. The NRC's intervention is necessary to remedy present underfunding due to unanticipated inflation, lower than expected growth due to loss of load and customer exodus, rate settlements and the lag in collecting funds due to ratemaking delays.³ The current status of decommissioning funding and the certainty that restructuring, whenever it occurs, will exacerbate the problem warrants the NRC's attention now.

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?

³ Moreover, the funding shortfalls from these reductions in collection create an additional shortfall. The utilities must recoup not only the funds that should have been collected in earlier years, but the lost earnings potential on those funds as well. To the extent utilities under collect in early years due to inflation, rate settlements and the time lag in ratemaking, they also lose several years of appreciation of the value of the amounts under collected.

Entergy has no comment on this issue.

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?

Entergy believes that the onset of competition in the electric utility industry does not necessarily mean that a higher level of financial assurance is required. There is, however, an urgent need for assurance of continued recovery in rates of adequate funds to meet the existing financial assurance requirements, to safely decommission nuclear units. Decommissioning obligations are federally mandated and are a matter of compelling federal interest, as being vital to the protection of public health and safety. It is crucial, therefore, that the NRC take action to assure that decommissioning obligations are immediately addressed irrespective of the pace of restructuring.

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 provisions 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 fact that "there is 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,"⁴ along with recent NRC findings regarding the financial condition of the Tennessee Valley Authority ("TVA"), militates against allowing Federal utility licensees to continue to use statements of intent to provide financial assurance for decommissioning. A statement of intent on the part of a Federal utility licensee provides no assurance, particularly when the Federal utility can use its decommissioning fund at its own discretion, as is the case with the TVA.

Entergy supports Acting Inspector General Leo Norton's recommendation that the NRC re-evaluate the basis for allowing federal utilities to provide financial assurance through statements of intent. Entergy would go further and recommend that exceptions for federal utility licensees as to financial assurance requirements for decommissioning be eliminated. To allow federal utility licensees such as TVA to continue to provide financial assurance through statements

⁴ "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors," Advance Notice of Proposed Rulemaking, 61 Fed. Reg. 15427, 15429 (April 8, 1996).

of intent illustrates and highlights the potential fate of all decommissioning obligations: as a burden on federal taxpayers. If taxpayers are tacitly required to serve as an ultimate source of decommissioning funds for federal utilities, why would they not be required to fund the decommissioning obligations of investor owned utilities that cannot recover funding for the decommissioning obligation pursuant to the regulatory compact under which nuclear units were constructed?

At this time, Entergy does not suggest, however, that taxpayers ultimately be responsible for the decommissioning obligations of federal utilities or investor-owned utilities. Rather, Entergy believes that federal utilities should not be allowed to implicitly rely on the taxpayers to pay for their decommissioning obligations, because such an implicit arrangement provides a competitive advantage for federal utilities.⁵ Further, Entergy believes that taxpayer exposure for the costs of the decommissioning obligations of investor-owned utilities is also undesirable. For that reason, Entergy supports federal action that would provide assurance of continued rate recovery of adequate decommissioning funding from all utility customers for whom the nuclear units were built, through exit fees or other non-bypassable surcharges.

⁵ The TVA's recent addition of \$400 million of investment to its nuclear decommissioning fund is not competitively neutral, either. The TVA will likely fund this investment by issuing tax-exempt public bonds, an option that investor-owned utilities do not have for the funding of their decommissioning trust funds.

E. Status of Decommissioning Trust Funds During Safe Storage Period

E.1. What real rate(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?

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?

Entergy currently plans to decommission its nuclear plants through removal of radioactive components and dismantling. Therefore, Entergy's current decommissioning plan does not include a "safe storage period."

F. Reporting on the Status of Decommissioning Funds

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

Each year, the NRC should require licensees to provide the following information:

(i) cost estimates for decommissioning the nuclear plant; and (ii) the status of funding of decommissioning costs, which would include the dollar amount in the decommissioning fund.

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

The NRC should require licensees to file updated decommissioning cost estimates and report on the status of decommissioning funding every year. Annually, decommissioning information will be captured in each utility's financial statements under the Financial Accounting Standards Board's proposed "Accounting for Certain Liabilities Related to Closure or Removal of Long-Lived Assets."