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DOCKET NUMBER
PROPOSED RULE PR 50
(61 FR 49711)**Electronic Filing**John C. Hoyle
Secretary, U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTN: Docketing and Service Branch

**Re: Draft Policy Statement on the Restructuring and
Economic Deregulation of the Electric Utility
Industry; 61 Fed. Reg. 49,711 (Sept. 23, 1996)**

Dear Mr. Hoyle:

On September 23, 1996, the Nuclear Regulatory Commission ("NRC") published in the Federal Register a draft policy statement regarding the NRC's expectations for, and its approach to, power reactor licensees as the electric utility industry moves from an environment of rate regulation toward greater competition.^{1/} On behalf of the participating members of the Utility Decommissioning Group ("Group"), Niagara Mohawk Power Corporation and Rochester Gas & Electric Company,^{2/} we submit the following comments on the draft policy statement.

^{1/} The NRC subsequently extended the comment period 60 days from the original December 9, 1996, date (61 Fed. Reg. 65,190 (December 11, 1996)).

^{2/} For purposes of these comments, the participating members of the Utility Decommissioning Group are Duke Power Company and Texas Utilities Electric Company. Each Group member company owns or operates one or more nuclear power plants subject to NRC regulation.

We agree with the NRC's views, as stated in the draft policy, that (1) the existing regulatory framework is generally sufficient at this time to provide reasonable assurance of the financial qualifications of both electric utility and non-electric-utility applicants and licensees and (2) the NRC's existing decommissioning funding assurance requirements generally provide an adequate regulatory basis to provide reasonable assurance of availability of decommissioning funds (61 Fed. Reg. at 49,711).^{3/} We also acknowledge that rate deregulation could create situations where a licensee that previously qualified as an "electric utility" under 10 C.F.R. § 50.2 may, at some point, no longer meet that definition (such that, under existing regulations, the licensee would no longer be exempt from financial qualifications review or entitled to fund for decommissioning on a "pay-as-you-go" basis using an external trust).

We do not agree, however, with the suggestion in the draft policy that failure to satisfy the current definition of "electric utility" should necessarily require a licensee to satisfy the more stringent decommissioning funding assurance requirements applicable to non-electric utilities (61 Fed. Reg. at 49,712). (Presumably this position is not final, since the NRC has received comments on an Advance Notice of Proposed Rulemaking but has not yet proposed regulatory action on this front, which could include amendment of the "electric utility" definition.) Rather, we encourage the NRC to consider whether the definition of "electric utility" remains appropriate as a test of whether a licensee should be exempt from financial qualifications review or up-front decommissioning funding. In this regard, the Commission should not focus solely on whether an entity recovers (directly or indirectly) through rates the costs of electricity that it generates or distributes, but instead on whether, in light of all relevant factors, the entity should be subject to particular financial qualifications or decommissioning funding requirements.

One particularly troubling aspect of the draft policy statement relates to its mention of the Staff's continuing interest in the allocation of regulatory responsibility and obligations among co-owners. The draft policy suggests that many power reactor licensees are "joint owners," and the implication is that the NRC may at some future time seek to impose joint and several liability on co-owners for decommissioning funding obligations. Co-owners of nuclear power plants are typically, if not universally, tenants in common, not joint owners, and as such are not jointly and severally liable. Rather, each co-owner is liable

^{3/} By letter dated June 24, 1996, we submitted comments on the NRC's Advance Notice of Proposed Rulemaking ("ANPR") concerning nuclear power plant decommissioning funding, on behalf of the Utility Decommissioning Group and Pacific Gas & Electric Company.

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for its own specified share of regulatory obligations, including funding for decommissioning. This has been acknowledged in NRC guidance on the subject. Any effort to alter this legal relationship would retroactively alter, and likely jeopardize, the business arrangements which underpin nuclear power plant co-ownership.

We appreciate the opportunity to comment on these important issues. We look forward to the issuance, and opportunities for public comment on, the forthcoming substantive regulatory initiatives discussed in the draft policy statement.

Sincerely,

[document retrieved from Electronic
Bulletin Board]

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Utility Decommissioning Group,
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