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**BEFORE THE
NUCLEAR REGULATORY COMMISSION
Washington, D.C.**

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Draft Policy Statement on the Restructuring)
and Economic Deregulation of the)
Electric Utility Industry)

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**COMMENTS OF
THE NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS**

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

The National Association of Regulatory Utility Commissioners (NARUC) hereby submits its comments in response to the Draft Policy Statement (hereinafter "Draft") issued by the Nuclear Regulatory Commission (NRC or the Commission) in the above-captioned proceeding on September 23, 1996. 61 Fed. Reg. 49711 et seq.

NATURE OF THE PROCEEDING

By its issuance of the Draft, the Commission has opened this proceeding to address its concerns regarding the potential safety impacts on NRC power reactor licensees resulting from the ongoing economic restructuring of the electric utility industry. Consistent with its mission to regulate the safety of nuclear power plants, the NRC monitors the actions of plant owners and operators, as well as external factors affecting the ability of such owners and operator to operate nuclear facilities safely. This proceeding is part of the Commission's ongoing monitoring process.

The Draft outlines the Commission's concerns in the following areas: the effect that increasing competition in utility markets may have on nuclear plant ownership issues due to disaggregation of generation, transmission and distribution services, divestiture of plants and other facilities, and increased merger activity; whether increasing competition will lead to early

shutdowns of nuclear facilities, affecting the licensee's ability to support its decommissioning funding obligations; the effect of increased competition and attendant financial distress on nuclear facilities with multiple owners; and whether industry restructuring activities will require the NRC to subject owners and operators to significant change review with respect to antitrust matters.

In the Draft, the Commission also announced its intention to "work and consult with the State PUCs through the National Association of Regulatory Utility Commissioners (NARUC), and with FERC and the Securities and Exchange Commission (SEC) to coordinate activities and exchange information."

INTEREST OF THE NARUC

The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the fifty States engaged in the economic and safety regulation of carriers and utilities. The mission of the NARUC is to serve the public interest by seeking to improve the quality and effectiveness of public regulation in America. More specifically, the NARUC contains the State officials charged with the duty of regulating the retail rates and services of electric utilities operating within their respective jurisdictions. These officials have the obligation under State law to assure the establishment and maintenance of utility services as may be required by the public convenience and necessity, and to ensure that such services are provided at rates and conditions which are just, reasonable, and nondiscriminatory for all consumers.

COMMENTS¹

The NARUC deeply appreciates this opportunity to respond to the issues and questions raised by the Commission in its Draft. As we stated in our June 28, 1996 comments in response to the Commission's Advance Notice of Proposed Rulemaking (ANPR) concerning decommissioning funding assurance, the Association, its officers and members have been pleased to act as a liaison with the NRC on the issue of reactor safety in a restructured utility industry. We commend the Commission for its efforts to reach out to State regulators through the public briefings it has convened, attendance of NRC commissioners and staff at NARUC meetings, and more informal contacts. For our part, we have found the increased State/NRC dialogue that has occurred over the last two years to be invaluable.

As a general matter, the NARUC supports the Commission's decision to reconsider its regulatory policies in each of the areas of concern it identified in the Draft. To the extent NRC policies to ensure safe operation and decommissioning of power reactors were premised on traditional "rate base/rate of return" methodologies, they should be reexamined as market-based pricing and policies promoting customer choice are implemented, currently through activities occurring primarily at the State level. Moreover, the NARUC supports the Commission's decision to take a cautious approach to reforming its regulatory policies because we believe that

¹ On December 10, 1996, the Commission extended the comment deadline in this proceeding until February 9, 1997, indicating it would consider comments filed after that date to the extent "it is practicable to do so." 61 Fed. Reg. 65190 (December 11, 1996). The NARUC respectfully requests that the Commission consider the views expressed by the Association in these comments despite being submitted after February 9. These comments were delayed so that they could be considered by the Association at its 1997 Winter Meetings, held from February 23-26, 1997.

the industry restructuring process will evolve over at least the next decade through a process of experimentation, particularly at the State level where the bulk of utility sales occur and costs are recovered.

In the Draft, the Commission summarized the policies it intends to implement and the actions it intends to take to respond to the economic changes in the utility industry:

- "(1) Continue to conduct its financial qualifications, decommissioning funding and antitrust reviews as described in the Standard Review Plans being developed in concert with this policy statement;
- "(2) Identify all owners, indirect as well as direct, of nuclear power plants;
- "(3) Establish and maintain staff-level working relationships with State and Federal rate regulators;
- "(4) Evaluate the relative responsibilities of power plant co-owners/co-licensees; and
- "(5) Reevaluate its regulations for their adequacy to address changes resulting from rate deregulation."

Just as the NARUC supports the Commission's goal of ensuring the continued safe operation of nuclear power plants, we also support each of the actions it proposes to take in this proceeding. In particular, we strongly support the Commission's intention to encourage communication and cooperation between regulatory agencies at both State and Federal levels. Further, we agree with the NRC's statements that it is "the primary role" of State and Federal economic regulators to set rates to support safe plant operation and decommissioning, but recognize the Commission's legitimate interest in assessing and if necessary, acting, in response to a licensee's financial situation.

Turning to each of the proposed actions:

First, the Commission's intention to continue conducting financial qualification, decommissioning funding and antitrust reviews is clearly appropriate. While the pace and scope

of restructuring is not entirely predictable, it is critical that during this transition period, the Commission become knowledgeable concerning the financial implications and the details of implementation of a restructured wholesale and retail generation market. The NARUC supports the measured pace the Commission continues to pursue as it develops a more sophisticated understanding of increasingly competitive electric services.

Second, we support the NRC's intention to identify all owners, direct and indirect, of nuclear power plants. Indeed, the NARUC and its individual member commissions stand ready to work with the Commission and its staff to share information to support this goal.

Third, on that point, we continue to believe that it is critical that there be strong staff-to-staff working relationships between the NRC, FERC, and State commissions, and accordingly, we strongly support this element of the Draft. While the Commission is directly involved in safety regulation, we recognize that NRC staff needs to be able to contact their economic regulatory counterparts in the States for information that will help the Commission understand what impending actions of State commissions and legislatures could have on issues of plant ownership, sunk cost recovery, decommissioning funding and other critical issues. We are particularly pleased that the NRC/NARUC dialogue has been reinvigorated at both the Commissioner level (through last year's public workshop, NRC participation in our Nuclear Issues conference in Fort Myers, Florida in January of this year, and through Commissioner Rogers steadfast participation in NARUC meetings) and at the staff level through the active participation of NRC personnel in the work of the NARUC committees and through informal contacts on an almost daily basis.

Fourth, as in the case of the issue of ownership identification, the NARUC supports the Commission's intent to assess and understand the particular issues raised in cases of multiple-owned nuclear plants.

And finally, as NARUC representatives have stated in the past, the Association supports NRC efforts to reevaluate its regulations in light of changes in the structure and operation of the utility industry. We again urge the Commission to take a cautious approach with the awareness that changes in its safety and decommissioning policies can directly affect the competitive posture, for better or worse, of the affected plant owners and operators. We believe that the cautious but vigilant approach the NRC has thus far taken is exactly right.

CONCLUSION

The NARUC appreciates this opportunity to provide its views on the issues raised by the Notice. We again pledge our continued efforts to work with the Commission, the nuclear industry and all affected parties to ensure that changes in the structure and operation of the electric utility industry in no way compromise the safe operation of nuclear facilities, nor jeopardize their safe decommissioning. We look forward to a continuing dialogue with the NRC on these and related issues as the restructuring process evolves.

Respectfully submitted,

(Document retrieved from
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