NOTATION VOTE

RESPONSE SHEET

TO: John C. Hoyle, Secretary

FROM: CHAIRMAN JACKSON

SUBJECT: SECY-97-102 - PROPOSED RULE ON FINANCIAL ASSURANCE REQUIREMENTS FOR DECOMMISSIONING NUCLEAR POWER REACTORS

Approved X w/comments Disapproved ____ Abstain ____

Not Participating ____ Request Discussion ____

COMMENTS:

See attached comments

Shirley Ann Jackson

Shirley Ann Jackson
SIGNATURE

Release Vote / X /

June 19, 1997
DATE

Withhold Vote / ___ /

Entered on "AS" Yes X No ____

COMMENTS ON SECY 97-102, PROPOSED RULE ON FINANCIAL ASSURANCE REQUIREMENTS FOR DECOMMISSIONING NUCLEAR POWER REACTORS

1. Reporting Requirement:

The reporting requirement should support the Commission in two ways. First, it will provide the Commission with information to keep abreast of financial situations that may have potential safety impacts on licensees. Second, it will provide the information to evaluate whether adequate amounts are provided in decommissioning trust funds for all nuclear power plants. With the rapid changes that are occurring with the transition to a competitive market, and for the NRC to appropriately respond to these changes, it is important that the NRC have information on the status of decommissioning funds as soon as possible.

Therefore, the licensee's initial report on the status of decommissioning funds should be submitted to the NRC within 9 months after the effective date of the final rule. Recommended revisions to the FRN are provided in the attachment.

2. Benchmarking:

The policy paper raises benchmarking as an issue and the potential for a future rulemaking. Benchmarking in this context refers to the amount of funding for decommissioning that the NRC believes a licensee should possess at given points in a nuclear power plant's projected operational life (amortization). For example, the NRC could consider requiring licensees to accumulate 25 percent of their decommissioning funds (less the credit for earnings on decommissioning funds as allowed by this proposed rulemaking) by the end of the tenth year of a plant's projected 40 years of operation.

NRC has traditionally relied on the FERC and the PUC's to ensure that all unfunded decommissioning obligations of the licensees would be collected. The underpinning of the change in the definition of "electric utility", in the proposed rule is that we appreciate this relationship with the FERC and the State PUCs, and we will continue to rely on these economic regulators for decisions on the collection, amortization, and disbursement of decommissioning trust funds.

While all State PUC's require some type of reporting on the status of decommissioning financial assurance, the scope, level of detail, the frequency of reporting and the degree of scrutiny of the reports by the various PUCs can differ substantially from State to State. With the variability in the level and the scrutiny given by PUCs to cost estimates, the Commission must ensure that our responsibilities continue to be met as changes result from economic deregulation by appropriately addressing the issue at this time, rather than completely leaving the subject of benchmarking to a later rulemaking.

I believe that this proposed rule must generally address benchmarking. The proposed rule should specify that a new regulatory requirement would only be triggered should the initial reports and follow on reports indicate that decommissioning funds are not being set aside at an appropriate rate, taking into account the specific financial situation of the licensee. The proposed rule and the supplementary information accompanying the proposed rule should set forth that the Commission reserves the flexibility to review, as needed the rate of accumulation of decommissioning funds, and either independently or in cooperation with

either the FERC and the state PUCs to take additional actions as appropriate on a case-by-case basis, including modification of a licensee's schedule for accumulation of decommissioning funds to assure a licensee's adequate accumulation of decommissioning funds.

3. Securitization:

Securitization has emerged as a financial mechanism to recover stranded assets by the electric utility industry as it transitions to a competitive market. The Federal Register statements of consideration regarding stranded costs should discuss that securitization of utility stranded assets is being considered as a financial recovery tool and as a non-bypassable charge mechanism. Recommended language is provided in the attachment.

4. The draft Financial Accounting Standards Board (FASB) standard No. 158-B

In the proposed rule, the NRC is endorsing the draft Financial Accounting Standards Board (FASB) standard No. 158-B, "Accounting for Certain Liabilities Related to Closure or Removal of Long-Lived Asset" as a means of providing guidance for licensees to comply with NRC regulations regarding licensee reporting on the status of decommissioning funding. Licensees would comply with the FASB standard once it becomes final. Page 6 of the policy paper discusses that NRC plans to endorse the draft FASB standard, and also states that the staff is issuing a draft regulatory guide that endorses the draft FASB standard to comply with the NRC proposed reporting requirements. A copy of the draft FASB standard should be provided as an enclosure to the paper.

Attachment

I. Reporting Requirement

On page 55, FRN, "Response" at top of page:
The Commission is proposing that every licensee submit its initial report on the status of decommissioning funds to the NRC within 9 months after the effective date of this rule, and at least once every 3 years thereafter...

Page 79, FRN:
(f)(1) Each power reactor licensee shall report to the NRC within 9 months after [the effective date of this rule], and at least once every 3 years thereafter on the status of its decommissioning funding for each reactor facility or part of a reactor facility that it owns...

III. Securitization

Page 10, FRN, in second line from the bottom of the page:
These mechanisms (e.g., wire charges, non-bypassable customer fees, including securitization, exit fees)...

Page 15 of FRN, "Response" insert after the second sentence of the second paragraph: "Further, States are considering a number of options for assessing non-bypassable charges to recover decommissioning costs, as well as other stranded costs. One such option is "securitization," which entails financing the recovery of stranded costs through issuance of bonds whose principal and interest would be repaid by an irrevocable, non-bypassable charge set by State statute on an electric utility's distribution customers. Because the income stream to repay the bonds would be securitized by the irrevocable, non-bypassable charge, the bonds would be highly rated and would thus require a lower interest rate than riskier debt. Also, these securitized bonds would not be part of the utility's capital structure, and so would not reflect the higher cost of equity capital. The spread in interest cost between highly rated securitized debt and lower rated utility capital that includes both debt and equity makes securitization attractive to many States. The NRC believes that securitization has the potential to provide an acceptable method of decommissioning funding assurance, although other mechanisms that involve non-bypassable charges may provide comparable levels of assurance and should not be excluded from consideration by State authorities."

Last paragraph would then begin: "As stated in the NRC's..."

In the last line on page 20 (response), after the words: "...through other non-bypassable mechanisms," insert: "such as wire charges, non-bypassable customer fees, including securitization, or exit fees,"

Lastly, the third sentence from the end of the last paragraph in the response should have the word "some" inserted between the words "that" and "plants."