

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

(Docket No. RM05-15-000; Order No. 658)

Modification of Nuclear Plant Decommissioning Trust Fund Guidelines

(Issued May 27, 2005)

AGENCY: Federal Energy Regulatory Commission

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its nuclear plant decommissioning trust fund (Fund) guidelines to remove the requirement that the financial report that public utilities furnish to the Commission each year must show all purchases and sales of investments and substitute a requirement that public utilities must include in their report a summary amount for purchases of fund investments and a summary amount for sales of fund investments. All other reporting requirements in the special provisions that relate to Fund reports remain in place; *e.g.*, records of individual purchases and sales of investments must still be maintained even if such individual transactions are not routinely reported. These modifications are the result of a review conducted by the Commission's Information Assessment Team (FIAT), identifying the Commission's current information collections, evaluating their original purposes and current uses, and proposing ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current collections.

These changes in the Commission's regulations will reduce the reporting burden on the electric industry while simultaneously simplifying Fund reports and making it easier for the Commission to review them.

EFFECTIVE DATE: The rule will become effective upon [insert date 30 days after publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Modification of Nuclear Plant Decommissioning
Trust Fund Guidelines

Docket No. RM05-15-000

ORDER NO. 658

FINAL RULE

(Issued May 27, 2005)

Introduction

1. This Final Rule deletes from the Commission's regulations the requirement that the nuclear plant decommissioning trust fund report that public utilities furnish to the Commission each year must show all purchases and sales of trust fund investments. This Final Rule instead requires that public utilities must include in their annual trust fund report, only a summary amount for purchases of fund investments and a summary amount for sales of fund investments. All other requirements in the regulations pertaining to nuclear plant decommissioning trust funds remain in place, including maintaining records of each purchase or sale of a trust fund investment so that, as appropriate, the Commission may review them. These changes in the Commission's nuclear plant decommissioning trust fund regulations resulted from a review of the Commission's regulations conducted by the Commission's Information Assessment Team (FIAT) that was tasked to assess the Commission's information needs. The tasks identified to meet

this mission included identifying all of the Commission's current information collections, through forms and filing requirements (electric, hydropower, natural gas, oil and general) and evaluating their original purposes and current uses, and proposing ways to reduce the reporting burden on industry through elimination, reduction, streamlining or reformatting of current collections. The modifications to the Commission's nuclear plant decommissioning trust fund regulations contained in this final rule will reduce the reporting burden on the electric industry, while simultaneously simplifying reports filed with and reviewed by the Commission.

Background

2. On June 16, 1995, the Commission issued Order No. 580,¹ establishing requirements for the formation, organization, and operation of nuclear plant decommissioning trust funds (Fund) and for Fund investments. Order No. 580 established requirements for the organization and operation of the Fund, and for the particular investments which the Fund may make.
3. Order No. 580 provided, among other things, that a Fund must be an external Fund and that a Fund Trustee must be independent of the public utility, have a net worth of at least \$100 million, exercise the care that a reasonable person would exercise in the same circumstances, keep accurate and detailed records, and open the Fund to inspection and audit.

¹ *Nuclear Plant Decommissioning Trust Fund Guidelines*, Order No. 580, 60 FR 34109 (June 30, 1995), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,023 (1995), *order on reh'g*, Order No. 580-A, 62 FR 33342 (June 12, 1997), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,055 (1997) (Order No. 580).

4. Order No. 580 further provided that the Trustee may not invest in any securities of the public utility that owns the nuclear plant or in that public utility's affiliates, associates, successors or assigns and may only use the Fund to decommission the nuclear plant to which the Fund relates and to pay the administrative and other expenses of the Fund, including taxes. Public utilities are to deposit all decommissioning collections into the Fund at least quarterly and to refund all excess collections to customers in the manner that the Commission prescribes.

5. As relevant here, the public utility must submit to the Commission, by March 31 of each year, one original and three conformed copies of a financial report that shows for the previous calendar year: (a) the activity of the Fund during the period, including amounts received from the public utility, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity, and payment of Fund expenses, including taxes; and (b) Fund assets and liabilities at the beginning and end of the period (excluding the liability for decommissioning).

Discussion

6. The intent of this Final Rule is to clarify exactly what information should be submitted in the annual financial report to the Commission. Many public utilities include in their yearly reports of Fund activity every purchase and sale transaction that the Fund engaged in over the course of the year. This practice results in trust fund reports that are hundreds, and sometimes thousands, of pages long. It is difficult, and sometimes impossible, to find pertinent information. Some of the computerized files that the public utilities are forwarding to the Commission from their Trustees are so large that the

Commission cannot open them, or they take an inordinately long time to access. While it is important for public utilities (and the Trustees) to maintain complete records, it is not necessary that the Commission routinely receive this volume of information each year for each Fund.

7. The difficulty arises from the inclusion of the phrase “purchases and sales of investments” in 18 CFR 35.33(d)(2). What the Commission needs is typically not information on every individual transaction, but summaries of purchases and sales transactions of Fund investments. When describing the activity of the Fund during the reporting period, public utilities with nuclear plants should only report to the Commission the amounts that the Fund received from the public utility, the gains and losses from overall investment activity, disbursements from the Fund for decommissioning activity, payment of Fund expenses, including taxes, and the Fund assets and liabilities (excluding the liability for decommissioning) at the beginning and end of the reporting period. This is the information that the Commission routinely needs.

8. Accordingly, the Commission is deleting the phrase “purchases and sales of investments” from 18 CFR 35.33(d)(2) and substituting the requirement that public utilities must include in their filing a summary amount for purchases of Fund investments and a summary amount for sales of Fund investments.

9. The Commission is also adding an express requirement that, consistent with section 35.32(a)(7) of the Commission’s regulations,² public utilities owning nuclear plants must maintain records of individual purchases and sales transactions until after

² 18 CFR 35.32(a)(7).

decommissioning has been completed and any excess jurisdictional amounts have been returned to ratepayers in a manner that the Commission determines. Public utilities need not include these records in the yearly report furnished to the Commission. It was understood in Order No. 580 that the public utilities would maintain records of purchases and sales of Fund investments.³ They must do this to administer the Fund prudently. The Commission is now expressly incorporating this requirement into its regulations. That is, the Commission will now expressly require that public utilities continue to maintain records of individual purchases and sales of investments. At any time, of course, the Commission can review these records to ensure that the Fund is conforming to the Commission's nuclear plant decommissioning trust fund guidelines.⁴

Information Collection Statement

10. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.⁵ Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The information collection requirements for this final rule are contained in FERC-516, "Electric Rate Filings" (1902-0096).

³ See 18 CFR 35.32(a)(5).

⁴ *Id.*

⁵ 5 CFR 1320.11.

Estimated Annual Burden

11. This final rule clarifies the Commission's requirements regarding the organization and operation of Funds and the investment of Fund assets. The Commission estimates that the public reporting requirements for the information collection requirements at issue contained in this rule average two hours per response. Public utilities submit this information to the Commission on an annual basis. The Commission estimates that the number of respondents is 53. As there are an average of two responses per year by each affected public utility (a separate annual report is filed for each nuclear plant, and some respondents have interests in more than one nuclear plant), the annual burden associated with this information requirement is 212 hours. The burden estimate includes the time required to implement the revised standards, search existing data sources, gather and maintain the data needed, and complete and review the information.

12. As noted immediately above, the Commission currently receives reports from 53 companies.⁶ The Commission estimates that, under its current rules, it takes four hours to prepare and submit a report. By reducing the content of the report from filing each purchase and sales transaction to filing summary amounts for purchases and sales of fund investments, this final rule reduces the amount of time necessary to prepare and submit a report from four to two hours. The estimates shown in the table below reflect the total burden that the final rule will impose.

⁶ This is a decrease from the 72 companies estimated in Order No. 580.

Data Collection	Number of Respondents	Number of Hours	Average Number of Responses Per Year	Total Annual
FERC-516	53	2	2	212

Title: Nuclear Plant Decommissioning Trust Fund Guidelines (FERC-516 [Electric Rate Filings])

Action: Modification of collection

OMB Control No. 1902-0096

Respondents: Public utilities owning nuclear power plants

Frequency of Responses: Annually

Necessity of Information: The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities under the Federal Power Act (FPA). The Commission's Office of Markets, Tariffs, and Rates uses the data for evaluating electric rate filings submitted by the industry. The Division of Financial Audits of the Office of Market Oversight and Investigations uses the data in assessing whether jurisdictional companies are complying with the requirements of the Uniform System of Accounts and the Commission's regulations.

Internal Review: The Commission has reviewed this amendment to its regulations to eliminate the necessity of reporting annually every individual purchase and sale of investments that the Fund has transacted during the year, and has determined that this modification of its regulations is necessary to facilitate its review of Fund activities. The

modification, moreover, conforms to the Commission's plan for efficient information collection, communication, and management within the electric utility industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information/data retention requirements.

13. Interested parties may file comments regarding these burden estimates or any other aspect of this information collection requirement, including suggestions for reducing this burden, with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Office of Executive Director, Phone: (202) 502-8415, FAX (202) 273-0873, e-mail: michael.miller@ferc.gov].

Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission – (202) 395-4650.]

Environmental Analysis

14. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁷ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment – such as rules relating to information gathering, analysis, and dissemination and rules relating

⁷ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,783 (1987).

to electric rate filings under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.⁸ This Final Rule involves information gathering and analysis, and the collection and subsequent investment of money to fund nuclear plant decommissioning affects the rates that public utilities charge under sections 205 and 206 of the FPA, and whether those rates are just and reasonable. Accordingly, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

15. The Regulatory Flexibility Act of 1980 (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities.⁹ Most public utilities to which the Final Rule would apply do not fall within the RFA's definition of small entity.¹⁰ Consequently, the Commission certifies that this Final Rule will not have "a significant economic impact on a substantial number of small entities."

⁸ 18 CFR 380.4(a)(5), (15).

⁹ 5 U.S.C. 601-12.

¹⁰ 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. 13 CFR 121.201.

Document Availability

16. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through the Commission's Home Page

<http://www.ferc.gov> and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

17. From the Commission's Home Page on the Internet, this information is available in its eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@FERC.gov or toll-free at (800) 208-3676, or for TTY, contact (202) 502-8659. Or you may e-mail the Public Reference Room at public.referenceroom@ferc.gov.

Administrative Findings And Effective Date

19. The Administrative Procedure Act (APA)¹¹ requires rulemakings to be published in the *Federal Register*. The APA also mandates that an opportunity for comment be provided when an agency promulgates regulations. However, notice and comment are

¹¹ 5 U.S.C. 551-559.

not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.¹²

The Commission finds that notice and comment are unnecessary to this rulemaking. As explained above, the Commission is merely clarifying the proper scope of an annual report required by its regulations regarding the reporting of information on nuclear plant trust funds. This clarification does not change existing law or policy. It substantially reduces a reporting requirement and reduces the reporting burden on the electric industry. Accordingly, this rule is effective 30 days following publication in the *Federal Register*.

Congressional Notification

20. The Commission has determined, with the concurrence of the Administrator, Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a “major rule” within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.¹³ The Commission will submit this Final Rule to both houses of Congress and the General Accounting Office.¹⁴

¹² 5 U.S.C. 553b(3)(B).

¹³ 5 U.S.C. 804(2).

¹⁴ 5 U.S.C. 801(a)(1)(A).

List of subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 35 – FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Section 35.33 is amended by revising paragraph (d)(2) and adding paragraph (d)(4) to read as follows:

§ 35.33 **Specific provisions.**

* * * * *

(d) * * *

(2) Activity of the Fund during the period, including amounts received from the utility, a summary amount for purchases of fund investments and a summary amount for sales of fund investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including taxes; and

* * * * *

(4) Public utilities owning nuclear plants must maintain records of individual purchase and sales transactions until after decommissioning has been completed and any excess jurisdictional amounts have been returned to ratepayers in a manner that the Commission determines. The public utility need not include these records in the financial report that it furnishes to the Commission by March 31 of each year.

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