

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Promul- )  
gation of Rules for Nuclear Decommission- ) Case No. 99-1610-EL-ORD  
ing Compliance Pursuant to Chapter 4928, )  
Revised Code. )

FINDING AND ORDER

The Commission finds:

BACKGROUND:

On July 6, 1999, the governor of the state of Ohio signed Amended Substitute Senate Bill Number 3 (SB3). That legislation, among many things, established a starting date for competitive retail electric service in the state of Ohio. During the period of time leading up to the start of competitive retail electric service, the Commission is required to establish rules for a variety of issues related to a competitive retail electric environment. The Commission is specifically required in Section 4928.13, Revised Code, to establish a periodic filing mechanism for each electric utility that owns nuclear generation facilities in this state to demonstrate compliance with the decommissioning requirements of this Commission and the Nuclear Regulatory Commission (NRC).

On December 21, 1999, we issued for public comment our staff's proposal, which suggested proposed rules. The Commission received initial and reply comments to the staff's proposal from various stakeholders on January 31 and February 14, 2000. After reviewing the staff's proposal, the initial comments, and reply comments submitted in this matter, the Commission is adopting an appropriate rule for nuclear decommissioning compliance filings.

DISCUSSION:

Although the statutory directive to establish rules for nuclear decommissioning compliance filings is a new provision, this Commission has required a similar filing in accordance with its Entry of April 19, 1988, *In the Matter of the Commission's Investigation into the Funding of the Decommissioning Costs of Nuclear Generating Stations*. The rule the Commission is adopting, set forth as Attachment I to this Finding and Order, is essentially a codification of an existing process whereby the Commission collects sufficient information to monitor compliance with the decommissioning requirements. The Commission thoroughly considered all comments and based upon those comments, the Commission is adopting the staff's proposal with the following modifications.

FirstEnergy Corp. filed comments in which it requested that the Commission align its rule for the filing of the external trust fund status report with the reporting requirements of the NRC. The reports would thus be required every two years, beginning on March 31, 2001. We agree that coincidental filing at this Commission and the NRC would relieve the company of an unnecessary burden while ensuring current reporting information available for review. Further, the electric utility shall be responsive to staff requests for information during the biennial period. We have modified staff's proposal accordingly.

The Ohio Consumers' Counsel (OCC) proposed that the rules require the filing of the funding status reports and decommissioning cost reports in a formal docket. The Commission believes that the reports should be filed in a public record repository in the docketing division of this Commission. Therefore, the reports will be easily accessible by any interested parties. A provision for filing the reports as a notice filing with the docketing division has been added to the rule.

OCC and The Coalition for Choice in Electricity (CCE) requested that decommissioning cost estimates be filed annually in addition to the initial filing, as required by the rule on or before January 31, 2001. We believe preparation of a site specific decommissioning cost estimate would be an uneconomical effort on an annual basis. However, the rule is being clarified so that any update filed with the NRC would be included in the requirement that copies of reports to other state or federal agencies be filed with this Commission within 30 days of their submittal to that agency.

OCC supported the inclusion of the staff proposed four elements that must be in the report on the external trust fund investments: the receipts of the fund, investment income, costs incurred, and current balance of the fund. However, OCC offered a fifth item, a description of the type and nature of each investment. The Commission agrees that this additional information would be useful in analyzing the adequacy of the funding; however, the filing need not be more detailed than the return and grade of the investment. The rule is being modified to require a description of the fund investments, limited to return and investment grade.

OCC also requests that the rule be made to apply to nuclear facilities owned by Ohio electric utilities or their affiliates, but located outside of Ohio. OCC acknowledges, and the Commission agrees, that Section 4928.13, Revised Code refers only to nuclear generation facilities located in this state. Accordingly, the Commission has not made the rule applicable to facilities outside of Ohio. However, it should be noted that the Commission may obtain data regarding nuclear generating facilities located outside this state, where they are owned by Ohio electric utilities, under other authorizing statutes.

ORDER:

It is, therefore,

ORDERED, That the filing and reporting requirements for nuclear decommissioning compliance, as set forth in Attachment I of this Finding and Order are hereby adopted. It is, further,

ORDERED, That copies of Rule 4901:1-9-09 be filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State, in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That the adopted rule be effective as of the earliest date permitted by law. Unless otherwise ordered by the Commission, the review date for rule 4901:1-9-09 shall be September 30, 2002. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Alan R. Schriber, Chairman

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Ronda Hartman Fergus

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Craig A. Glazer

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Judith A. Jones

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Donald L. Mason

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