PROJECT NO. 29169

RULEMAKING ON NUCLEAR DECOMMISSIONING FOLLOWING THE TRANSFER OF NUCLEAR GENERATING PLANT ASSETS	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

PROPOSAL FOR PUBLICATION OF NEW §25.303 AS APPROVED AT THE APRIL 29, 2004 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes new §25.303, relating to Nuclear Decommissioning following the Transfer of Nuclear Generating Plant Assets. The proposed new rule will prescribe rules for the administration of a nuclear decommissioning trust fund and the continued collection of funds for such a trust, in the event of a transfer of the nuclear decommissioning trust fund in connection with the sale of a nuclear generating plant assets. Project Number 29169 is assigned to this proceeding.

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is interested in receiving only "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

Martha Elvey, Financial Review Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Elvey has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be assuring that funds for the safe decommissioning of nuclear power plants when they reach the end of their useful lives continue to be collected and invested in a manner that minimizes the impact of the decommissioning costs on consumers of electricity. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed. Costs for the collection, administration, and investment of decommissioning funds have been incurred by regulated electric utilities, and the impact of the rule is to prescribe responsibilities for companies to whom an interest in a nuclear generating plant is transferred. These are essentially the same economic costs that have been incurred by regulated utilities.

Ms. Elvey has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas

78701 on Friday, June 11, 2004. The request for a public hearing must be received within 21 days after publication.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Reply comments may be submitted within 31 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 29169.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supplement 2004) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically, PURA §39.205 which provides that decommissioning costs remain subject to cost-of-service regulation.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.051, 39.201, and 39.205.

§ 25.303. Nuclear Decommissioning following the Transfer of Nuclear Generating Plant Assets.

(a) **Purpose.** The purpose of this rule is to:

(1) delineate the rights and obligations of the transferor and the transferee companies involved in a transfer of Texas jurisdictional nuclear generating plant assets for which decommissioning funds will continue to be collected from retail customers pursuant to Public Utility Regulatory Act (PURA) §39.205, as well as the obligations of the utility responsible for collecting the decommissioning funds;

(2) prescribe a utility's continuing responsibility for collecting funds through its rates for nuclear decommissioning trust funds for the benefit of the transferee company;

(3) protect the nuclear decommissioning trust funds so that the funds collected from customers through the utility's rates, plus the amounts earned from investment of the funds, will be available for decommissioning, in the event of a transfer of the nuclear decommissioning trust funds;

(4) minimize the amounts collected from customers for nuclear decommissioning by maximizing net earnings on the nuclear decommissioning trust funds through prudent investment of such funds, in accordance with the guidelines set out in subsection (e) of this section, including achieving optimum tax efficiency.

(b) **Application.** This rule supercedes §25.231(b)(1)(F) of this title (relating to Allowable Expenses) and §25.301 of this title (relating to Nuclear Decommissioning Trusts) for

electric utilities that have completed their business separation pursuant to PURA §39.051 or that transfer Texas jurisdictional nuclear generating plant assets, including the associated nuclear decommissioning trust funds, to another entity prior to, or as part of, a business separation. This rule applies to:

(1) an electric utility or a power generation company that transfers its Texas jurisdictional nuclear generating plant assets, including any associated nuclear decommissioning trust funds, to another entity;

(2) a utility that is responsible for collecting revenue for the decommissioning of a Texas jurisdictional nuclear generating plant assets that has been transferred to another entity; and

(3) a transferee company.

(c) **Definitions.**

(1) Transferor Company—An electric utility, its successor in interest, or any power generation company that transfers Texas jurisdictional nuclear generating plant assets, including any associated nuclear decommissioning trust funds collected from customers.

(2) Transferee Company—An entity or its successor in interest to which Texas jurisdictional nuclear decommissioning generating plant assets, including the associated nuclear decommissioning trust funds, are transferred from a transferor company.

(3) Collecting Utility—The electric utility or transmission and distribution utility responsible for collecting the decommissioning funds from customers and depositing them into the nuclear decommissioning trust funds. The collecting utility may or may not be the transferor company.

(4) Nuclear Decommissioning Trust Funds—Funds that are contained in one or more external and irrevocable trusts created for the purpose of protecting and holding revenue collected from customers to cover the costs of decommissioning a Texas jurisdictional nuclear generating plant at the end of its useful life.

(5) Decommissioning Funds Collection Agreement—An agreement between the collecting utility and the transferee company that governs the transfer of responsibility for administration of the nuclear decommissioning trust funds, the collection of decommissioning revenues from utility customers, and the remittance of the funds to the nuclear decommissioning trust.

(d) **Transfer of Nuclear Decommissioning Trust Funds.**

(1) Prior to the closing of any transaction involving the transfer of a nuclear decommissioning trust funds:

(A) The collecting utility, the transferor company (if different than the collecting utility) and the transferee company shall jointly submit for the commission's review the proposed decommissioning funds collection agreement and the proposed agreements with the institutional trustee and investment manager(s) of the decommissioning trust, and copies shall be provided to the

commission's Legal and Enforcement Division and Financial Review Division.

(B) In connection with the submission required in subparagraph (A) of this paragraph, the transferee company shall submit an affidavit, signed under oath by an authorized executive of the transferee company, certifying that once the transfer of administration of the nuclear decommissioning trust funds is ordered by the commission, the transferred funds and the future contributions to the funds will be administered in accordance with subsection (e) of this section, and that the company will not challenge the authority of the commission to enforce its rules that shall be adopted from time to time with respect to the collection, investment and use of the funds provided by customers for nuclear decommissioning.

(2) For transfers of nuclear decommissioning trust funds that occurred before this rule took effect, the executed decommissioning funds collection agreement and agreements with the institutional trustee and investment manager(s) shall be filed at the commission within 15 days of the effective date of this rule. If such agreements must be amended to comply with this section, the amended agreements must take effect on or before the collecting utility's next general rate proceeding or a rate proceeding under subsection (g) of this section, whichever occurs first.

(3) Prior to executing an amended decommissioning funds collection agreement or amended agreement with the institutional trustee or investments managers, the proposed amended agreements shall be filed at the commission for review along

with a redlined version showing all changes made since the documents were reviewed by the commission, and copies shall be provided to the commission's Legal and Enforcement Division and Financial Review Division.

(4) All final agreements reviewed pursuant to subsection (d)(1)(A) and (d)(3) of this section shall be filed at the commission within 15 days of the execution of the documents.

(5) A transferee company shall establish one or more irrevocable trusts external to the transferee company for the purpose of receiving the nuclear decommissioning trust funds collected from customers. The transferee company shall be named as beneficiary of each such trust.

(6) The transferee company shall execute a decommissioning funds collection agreement with the collecting utility or, if appropriate, the transferor company. The agreement shall provide that the transferor company's rights to accumulated and future decommissioning funding and the responsibilities for decommissioning of the nuclear plant shall be transferred to the transferee company upon closing of the transaction.

(7) The collecting utility, transferor and transferee companies shall request one of the following:

(A) a commission review of the agreements filed pursuant to subsection (d)(1)(A) or (d)(3) of this section for compliance with this rule. The commission will provide written comments to the companies within 60 days of receipt of the request; or

(B) a contested case proceeding to approve or reject the agreements. The commission will issue an order within 120 days of the receipt of the joint request for a contested case proceeding. In considering whether or not to approve the decommissioning funds collection agreement, the commission may consider the impact on customers including any impact on federal income taxes related to the nuclear decommissioning trust funds, the ability of the transferee company to administer the trust, any investment restrictions on the transferee company, the ability of the commission to enforce its rules over the administration of the funds, and any other relevant factors.

(8) Absent a commission order to the contrary, the collecting utility shall be the administrator of the nuclear decommissioning trust funds established by the transferee company and shall be responsible for administering the funds in accordance with subsection (e) of this section.

(9) Upon the issuance of an order from the commission releasing the collecting utility from the obligation to administer the nuclear decommissioning trust funds, the transferee company that owns the nuclear decommissioning trust funds shall become the administrator of such funds in accordance with subsection (e) of this section.

(e) **Administration of the Nuclear Decommissioning Trust Funds.**

(1) **Duties of fund administrator.**

(A) Each fund administrator of a nuclear decommissioning trust shall assure that the nuclear decommissioning trust is managed so that the funds are secure and earn a reasonable return; and, that the funds provided from the utility's cost of service, plus the amounts earned from investment of the funds, will be available at the time of decommissioning.

(B) The fund administrator shall appoint an institutional trustee and may appoint an investment manager(s). Unless otherwise specified in paragraph (2) of this subsection, the Texas Trust Code controls the administration and management of the nuclear decommissioning trusts, except that the appointed trustee(s) need not be qualified to exercise trust powers in Texas. If the collecting utility is the acting administrator, the selection of such trustee and investment managers shall be made in consultation with the transferee company. The agreements with such trustee and investment mangers shall require that any reports regarding the trust funds given to the fund administrator shall also be given to the transferee company, if different from the fund administrator.

(C) The fund administrator shall retain the right to replace the trustee with or without cause. In appointing a trustee, the fund administrator shall have the following duties, which will be of a continuing nature:

(i) A duty to determine whether the trustee's fee schedule for administering the trust is reasonable, when compared to other institutional trustees rendering similar services, and meets the requirement of paragraph (3)(B)(i) of this subsection;

(ii) A duty to investigate and determine whether the past administration of trusts by the trustee has been reasonable;

(iii) A duty to investigate and determine whether the financial stability and strength of the trustee is adequate;

(iv) A duty to investigate and determine whether the trustee has complied with the trust agreement and this section as it relates to trustees; and,

(v) A duty to investigate any other factors which may bear on whether the trustee is suitable.

(D) The fund administrator shall retain the right to replace the investment manager with or without cause. In appointing an investment manager, the administrator shall have the following duties, which will be of a continuing nature:

(i) A duty to determine whether the investment manager's fee schedule for investment management services is reasonable, when compared to other such managers, and meets the requirement of paragraph (3)(B)(i) of this subsection;

(ii) A duty to investigate and determine whether the past performance of the investment manager in managing investments has been reasonable;

(iii) A duty to investigate and determine whether the financial stability and strength of the investment manager is adequate for purposes of liability;

(iv) A duty to investigate and determine whether the investment manager has complied with the investment management agreement and this section as it relates to investments; and,

(v) A duty to investigate any other factors which may bear on whether the investment manager is suitable.

(2) **Agreements between the fund administrator and the institutional trustee or investment manager.**

(A) The fund administrator shall execute an agreement with the institutional trustee. The agreement shall include the restrictions in subparagraphs (A)(i)-(v) of this paragraph and may include additional restrictions on the trustee. A fund administrator shall not grant the trustee powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section.

(i) The interest earned on the corpus of the trust becomes part of the trust corpus. A trustee owes the same duties with regard to the interest earned on the corpus as are owed with regard to the corpus of the trust.

(ii) A trustee shall have a continuing duty to review the trust portfolio for compliance with investment guidelines and governing regulations.

(iii) A trustee shall not lend funds from the decommissioning trust with itself, its officers, or its directors.

(iv) A trustee shall not invest or reinvest decommissioning trust funds in instruments issued by the trustee, except for time deposits, demand deposits, or money market accounts of the trustee. However, investments of a decommissioning trust may include mutual funds that contain securities issued by the trustee if the securities of the trustee constitute no more than five

percent of the fair market value of the assets of such mutual funds at the time of the investment.

(v) The agreement shall comply with all applicable requirements of the Nuclear Regulatory Commission.

(B) The fund administrator shall execute an agreement with the investment manager. (If the trustee performs investment management functions, the contractual provisions governing those functions must be included in either the trust agreement or a separate investment management agreement.) The agreement shall include the restrictions set forth in subparagraphs (B)(i)-(v) of this paragraph and may include additional restrictions on the manager. A fund administrator shall not grant the manager powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section.

(i) An investment manager shall, in investing and reinvesting the funds in the trust, comply with paragraph (3) of this subsection.

(ii) The interest earned on the corpus of the trust becomes part of the trust corpus. An investment manager owes the same duties with regard to the interest earned on the corpus as are owed with regard to the corpus of the trust.

(iii) An investment manager shall have a continuing duty to review the trust portfolio to determine the appropriateness of the investments.

(iv) An investment manager shall not invest funds from the decommissioning trust with itself, its officers, or its directors.

(v) The agreement shall comply with all applicable requirements of the Nuclear Regulatory Commission.

(3) Trust investments.

(A) **Investment portfolio goals.** The funds should be invested consistent with the following goals. The fund administrator may apply additional prudent investment goals to the funds so long as they are not inconsistent with the stated goals of this subsection.

(i) The funds should be invested with a goal of earning a reasonable return commensurate with the need to preserve the value of the assets of the trusts.

(ii) In keeping with prudent investment practices, the portfolio of securities held in the decommissioning trust shall be diversified to the extent reasonably feasible given the size of the trust.

(iii) Asset allocation and the acceptable risk level of the portfolio should take into account market conditions, the time horizon remaining before the commencement and completion of decommissioning, and the funding status of the trust. While maintaining an acceptable risk level consistent with the goal in subparagraph (A)(i) of this paragraph, the investment emphasis when the remaining life of the liability, as defined in subparagraph (B)(vi)(IV) of this paragraph, exceeds five years should be to maximize net long-term earnings. The investment emphasis in the remaining investment period of the trust should be on current income and the preservation of the fund's assets.

(iv) In selecting investments, the impact of the investment on the portfolio's volatility and expected return net of fees, commissions, expenses and taxes should be considered.

(B) **General requirements.** The following requirements shall apply to all decommissioning trusts. Where a transferee company has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit. For purposes of this section, a commingled fund is defined as a professionally managed investment fund of fixed-income or equity securities established by an investment company regulated by the Securities Exchange Commission or a bank regulated by the Office of the Comptroller of the Currency.

(i) Fees limitation. The total trustee and investment manager fees paid on an annual basis by the fund administrator for the entire portfolio including commingled funds shall not exceed 0.7% of the entire portfolio's average annual balance.

(ii) Diversification. For the purpose of this subparagraph, a commingled or mutual fund is not considered a security; rather, the diversification standard applies to all securities, including the individual securities held in commingled or mutual funds. Once the portfolio of securities (including commingled funds) held in the decommissioning trust(s) contains securities with an aggregate value in excess of $20 million, it shall be diversified such that:

(I) no more than 5.0 % of the securities held may be issued by one entity, with the exception of the federal government, its agencies and instrumentalities, and;

(II) the portfolio shall contain at least 20 different issues of securities. Municipal securities and real estate investments shall be diversified as to geographic region.

(iii) Qualified trusts. The fund administrator may invest the decommissioning funds by means of qualified or unqualified nuclear decommissioning trusts; however, the fund administrator shall, to the extent permitted by the Internal Revenue Service, invest its decommissioning funds in "qualified" nuclear decommissioning trusts, in accordance with the Internal Revenue Service Code §468A.

(iv) Derivatives. The use of derivative securities in the trust is limited to those whose purpose is to enhance returns of the trust without a corresponding increase in risk or to reduce risk of the portfolio. Derivatives may not be used to increase the value of the portfolio by any amount greater than the value of the underlying securities. Prohibited derivative securities include, but are not limited to, mortgage strips; inverse floating rate securities; leveraged investments or internally leveraged securities; residual and support tranches of Collateralized Mortgage Obligations; tiered index bonds or other structured notes whose return characteristics are tied to non-market events; uncovered

call/put options; large counter-party risk through over-the-counter options, forwards and swaps; and instruments with similar high-risk characteristics.

(v) The use of leverage (borrowing) to purchase securities or the purchase of securities on margin for the trust is prohibited.

(vi) Investment limits in equity securities. The following investment limits shall apply to the percentage of the aggregate market value of all non-fixed income investments relative to the total portfolio market value.

(I) Except as noted in subclause (II) of this clause, when the weighted average remaining life of the liability exceeds five years, the equity cap is 60%;

(II) When the weighted average remaining life of the liability ranges between five years and two and a half years, the equity cap shall be 30%. Additionally, during all years in which expenditures for decommissioning the nuclear units occur, the equity cap shall also be 30%;

(III) When the weighted average remaining life of the liability is less than two and a half years, the equity cap shall be 0%;

(IV) For purposes of this subparagraph, the weighted average remaining life in any given year is defined as the weighted average of years between the given year and the years of each decommissioning outlay, where the weights are based on each year's expected

decommissioning expenditures divided by the amount of the remaining liability in that year; and

(V) Should the market value of non-fixed income investments, measured monthly, exceed the appropriate cap due to market fluctuations, the fund administrator shall, as soon as practicable, reduce the market value of the non-fixed income investments below the cap. Such reductions may be accomplished by investing all future contributions to the fund in debt securities as is necessary to reduce the market value of the non-fixed income investments below the cap, or if prudent, by the sale of equity securities.

(vii) A decommissioning trust shall not invest in securities issued by the transferee company or the collecting utility collecting the funds or any of its affiliates; however, investments of a decommissioning trust may include commingled funds that contain securities issued by the transferee company or collecting utility if the securities of such company or utility constitute no more than 5.0% of the fair market value of the assets of such commingled funds at the time of the investment.

(C) **Specific investment restrictions.** The following restrictions shall apply to all decommissioning trusts. Where a transferee company has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit.

(i) Fixed-income investments. A decommissioning trust shall not invest trust funds in corporate or municipal debt securities that have a bond rating below investment grade (below "BBB-" by Standard and Poor's Corporation or "Baa3" by Moody's Investor's Service) at the time that the securities are purchased and shall reexamine the appropriateness of continuing to hold a particular debt security if the debt rating of the company in question falls below investment grade at some time after the debt security has been purchased. Commingled funds may contain some below investment grade bonds; however, the overall portfolio of debt instruments shall have a quality level, measured quarterly, not below a "AA" grade by Standard and Poor's Corporation or "Aa2" by Moody's Investor's Service. In calculating the quality of the overall portfolio, debt securities issued by the federal government shall be considered as having a "AAA" rating.

(ii) Equity investments.

(I) At least 70% of the aggregate market value of the equity portfolio, including the individual securities in commingled funds, shall have a quality ranking from a major rating service such as the earnings and dividend ranking for common stock by Standard and Poor's or the quality rating of Ford Investor Services. Further, the overall portfolio of ranked equities shall have a weighted average quality rating equivalent to the composite rating of the Standard and Poor's 500 index assuming equal weighting of each ranked security in the index.

If the quality rating, measured quarterly, falls below the minimum quality standard, the fund administrator shall as soon as practicable and prudent to do so, increase the quality level of the equity portfolio to the required level.

(II) A decommissioning trust shall not invest in equity securities where the issuer has a capitalization of less than $100 million.

(iii) Commingled funds. The following guidelines shall apply to the investments made through commingled funds. Examples of commingled funds appropriate for investment by nuclear decommissioning trust funds include United States equity-indexed funds, actively managed United States equity funds, balanced funds, bond funds, real estate investment trusts, and international funds.

(I) The commingled funds should be selected consistent with the goals specified in paragraph (1) and the requirements in paragraph (2) of this subsection.

(II) In evaluating the appropriateness of a particular commingled fund, the fund administrator has the following duties, which shall be of a continuing nature:

(-a-) A duty to determine whether the fund manager's fee schedule for managing the fund is reasonable, when compared to fee schedules of other such managers;

(-b-) A duty to investigate and determine whether the past performance of the investment manager in managing the

commingled fund has been reasonable relative to prudent investment and utility decommissioning trust practices and standards; and

(-c-) A duty to investigate the reasonableness of the net after-tax return and risk of the fund relative to similar funds, and the appropriateness of the fund within the entire decommissioning trust investment portfolio.

(III) The payment of load fees shall be avoided.

(IV) Commingled funds focused on specific market sectors or concentrated in a few holdings shall be used only as necessary to balance the trust's overall investment portfolio mix.

(f) Periodic Reviews of Decommissioning Costs and Nuclear Decommissioning Trust Funds.

(1) Following a transfer of Texas jurisdictional nuclear generating plant assets, including the associated nuclear decommissioning trust funds, any remaining costs associated with nuclear decommissioning obligations shall remain subject to cost of service regulation based on a periodic review of the costs. The reasonable and necessary nuclear decommissioning costs as approved by the commission shall be included as a non-bypassable charge of the collecting utility pursuant to subsection (g) of this section.

(2) The transferee company shall periodically perform, or cause to be performed, a study of the decommissioning costs of each Texas jurisdictional nuclear generating unit which it owns or leases an interest in. A study or re-determination of the previous study shall be performed at least every five years, starting from the date of the most recent decommissioning cost study for the plant on file with the commission. The study or re-determination shall consider the most current and reasonably available information on the cost of decommissioning. A copy of the study or re-determination shall be filed with the commission and copies provided to the commission's Financial Review Division and the Office of Public Utility Counsel.

(3) The commission, on its own motion or on the motion of the Legal and Enforcement Division, the Office of Public Utility Counsel, or any affected person, may initiate a proceeding to review the transferee company's balance of the trust, compliance with this section, or the annual funding amount. The transferee company shall provide any information required to conduct the review upon request in accordance with the commission's procedural rules.

(4) During each periodic review of decommissioning costs, the following evidence shall be provided:

(A) The transferee company shall file the periodic cost study described in paragraph (3) of this subsection, along with an updated decommissioning funding analysis, within 90 days of completion of the periodic cost study. The funding analysis shall be based on the most current information reasonably available for the cost of decommissioning, an allowance for contingencies of 10% of the cost of

decommissioning, the balance of funds in the decommissioning trusts, anticipated escalation rates, the anticipated after-tax return on the funds in the trust, and other relevant factors. The funding analysis shall be accompanied by testimony or a report supporting the assumptions used in the analysis and shall calculate the required annual funding amount necessary to ensure sufficient funds to decommission the nuclear generating plant at the end of its useful life.

(B) The decommissioning fund administrator shall demonstrate that the decommissioning funds are being invested prudently and in compliance with the investment guidelines in subsection (e) of this section.

(C) To the extent the transferee company is subject to investment restrictions that are more restrictive than the decommissioning investment guidelines in subsection (e) of this section, the transferee company (or the fund administrator and the transferee company, if different) shall demonstrate their efforts to obtain relief from such investment restrictions in order to permit investments in accordance with the guidelines in subsection (e) of this section.

(D) The transferee company (or the fund administrator and the transferee company, if different) shall demonstrate efforts to achieve optimum tax efficiency, including, as applicable, efforts to achieve “qualified” status in accordance with Internal Revenue Service Code Section 468/a (or any successor thereto) with respect to its nuclear decommissioning trust funds.

(5) Within 90 days after completion of decommissioning the nuclear generating plant, the transferee company shall file a request for a final reconciliation proceeding at the

commission. Any funds remaining in the trust after the completion of decommissioning shall be refunded to customers in a manner determined by the commission. If the reasonable and necessary costs of decommissioning exceed the amount available in the trust, the excess costs will be recovered through a non-bypassable charge approved by the commission if the transferee company has substantially complied with this section and prudently managed the decommissioning process.

(6) The transferee company or its successor in interest may request an increase or decrease in the annual funding amount by filing an updated funding analysis as described in paragraph (4) of this subsection if there has been a change of more than ten percent in the required annual funding amount necessary to ensure sufficient funds to decommission the nuclear generating plant at the end of its useful life.

(7) The transferee company shall file an annual report on May 15 of each year on to report the status of the decommissioning trust fund using a form approved by the commission.

(8) The collecting utility, as part of its annual earnings report, shall report the amounts and dates of the deposits into the decommissioning trust and, if different, the revenues received from customers for the time intervals corresponding to each deposit.

(g) Collecting Utility rate proceedings for decommissioning charges.

(1) A collecting utility that has decommissioning expenses embedded as part of a bundled rate shall apply to have its current level of decommissioning funding removed from its general rates and stated as a separate non-bypassable charge.

(A) In the case of a transfer of Texas jurisdictional nuclear generating plant assets to a non-affiliated entity, the request shall be made no later than 30 days following the closing of the transaction.

(B) In the case of a transfer of Texas jurisdictional nuclear generating plant assets to an affiliated power generating company, the request for a separate non-bypassable charge shall be made during the first general rate case following the transfer.

(2) The collecting utility shall deposit the decommissioning revenues into the nuclear decommissioning trust consistent with the terms of the decommissioning funds collection agreement on file with the commission and the most recent commission order authorizing decommissioning collections from customers. The decommissioning funds collection agreement may provide for remittance by the collecting utility of levelized periodic payments based on the most recent annual decommissioning funding amount approved by the commission; for the remittance of the actual amounts of non-bypassable decommissioning charges collected by the collecting utility during each applicable remittance period or for such other remittance arrangement as the commission concludes is reasonable and consistent with the purposes of this section; provided, however, that in any event the parties to the decommissioning funds collection agreement shall demonstrate that the remittance procedures achieve optimum tax efficiency in connection with the nuclear decommissioning trusts.

(A) The commission may order the collecting utility to discontinue the deposit of decommissioning revenues to the nuclear decommissioning trust funds if the

transferee company substantially or repeatedly fails to comply with any provision of this section.

(B) If levelized deposits are made into the fund, the following provisions apply.

(i) The collecting utility shall keep records of its daily receipts from customers once a separate non-bypassable charge is set by the commission.

(ii) Once the collecting utility has implemented a separate non-bypassable charge, it may request an adjustment in the non-bypassable charge if there is a material cumulative over- or under-collection of revenues, including interest, greater than or equal to 15% of the most recent annual nuclear decommissioning funding amount approved by the commission. The request shall be based on the difference between the actual cumulative decommissioning charge revenues collected from customers and the cumulative amount authorized to be collected since the last rate adjustment, including interest calculated in accordance with §25.236(e)(1) of this title (relating to True-Up filing procedures). The calculated over- or under-recovery amount will be applied to the new commission-authorized annual amount to determine the required non-bypassable charge.

(C) If deposits to the nuclear decommissioning trust funds are less frequent than weekly, an implied interest calculation shall be used in setting the decommissioning charge to account for the collecting utility’s short term use of the funds.

(3) After the issuance of a commission order under subsection (f)(1) or (f)(3) of this section that the cost of service for nuclear decommissioning for a particular plant has increased or decreased and should be adjusted, the collecting utility shall file a rate application within 45 days solely to adjust the non-bypassable charge. The filing shall provide a sales forecast, a proposed allocation methodology, a proposed tariff, and any other information necessary to implement the commission's order. Such rate proceedings will be conducted separately from the collecting utility's general rate proceedings and the commission will issue a final order within 120 days of receipt of the filing.

(4) The transferee company may elect to request a change in the decommissioning funding level during a general rate case of the collecting utility. The collecting utility shall give the transferee company at least 90 days notice of an anticipated rate application for its general rates to allow the transferee company to prepare a funding analysis to be filed jointly with the collecting utility's application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

ISSUED IN AUSTIN, TEXAS ON THE 30th DAY OF APRIL 2004
BY THE PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES

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