

NUCLEAR DECOMMISSIONING TRUST (“NDT”) INVESTMENT MANAGEMENT

SUMMARY OF NRC, IRS, FERC AND FASB RULES & REGULATIONS July 2009 UPDATE

Role of NRC: Nuclear Regulatory Commission (“NRC”) Regulations (Section 10, Code Federal Register (“CFR”), Parts 30, 40, 50, 51, 70 and 72), which became effective July 27, 1990, requires every entity with an ownership interest in a nuclear-fueled generating facility to submit a decommissioning financial assurance plan with the NRC. This financial assurance plan shall include a cost estimate for decommissioning and the method of assuring that funds would be available to pay for the cost of decommissioning. The funding options that are available to each licensee are (a) prepayment, (b) surety bond, insurance or parent company guarantee, (c) external sinking fund in an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates, (d) contractual obligation on the part of the licensee’s customers and (e) for applicable government agencies, a statement of intent.

In September 1998, the NRC amended its Section 10, Part 50.75 nuclear decommissioning financial assurance regulations by establishing the contractual obligation on the part of the licensee’s customers as an additional financial assurance mechanism and stating that only regulated utilities may use the external sinking fund method of funding (i.e., non-regulated utilities must use a funding mechanism other than the external sinking fund method). The September 1998 amendment also added the requirement that licensees must file a report with the NRC by March 31 of every odd-numbered year (annually for plants that are either within five years of being decommissioned or are in the process of being decommissioned). The biennial report (or annual, if applicable) to be filed with the NRC must specify the assumptions that underlie decommissioning funding assurance and shall include the current decommissioning cost estimate, the basis of the current cost estimate (i.e. whether based on the NRC minimum financial assurance formula or some other basis), the escalation rate assumed for the cost estimate, the assumed rate of return to be earned by the nuclear decommissioning trust (“NDT”) - - - - for investor-owned utilities, this rate of return is after-tax - - - - and the expected time period and amount of future contributions to be made to the NDT funds. Effective April 24, 2006, the NRC issued LIC-205, Revision 1, entitled *Procedures for the NRC’s Independent Analysis of Decommissioning Funding Assurance for Operating Nuclear Power Reactors*, for the express purpose of establishing a formal procedure for reviewing the biennial filings (or annual, if applicable) submitted by each licensee.

In March 1999, the NRC issued its regulations regarding Financial Qualifications and Decommissioning Funding Assurance. These regulations set forth the procedures under which the NRC will be reviewing funding plans. An important element of these regulations states that a licensee’s nuclear related revenues must be at least 80% rate regulated in order to be considered eligible for consideration as a “cost of service” regulated utility and therefore eligible for funding the decommissioning liability by means of an external sinking fund.

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A regulated “cost of service” utility undergoes a vigorous process with its state public service commission (“PUC”) and/or the Federal Energy Regulatory Commission (“FERC”) in order to determine the appropriate rates to sell electricity to its customers. This rate making process includes a lengthy investigation to determine the utility’s “cost of service” to provide electricity. This “cost of service” includes the annual contributions to NDT funds. The “cost of service” contributions are based on projected rates of return for the NDT funds (after-tax in the case of investor-owned utilities), projected escalation rates for decommissioning expenditures and the timing of those expenditures. However, there has been significant variance among utilities regarding the quantification of these factors in “cost of service” proceedings.

On December 24, 2002, the NRC issued amendments to the Section 10 CFR Part 50.75 nuclear decommissioning financial assurance regulations. The revised regulations became effective December 23, 2003. In October 2003, the NRC issued Revision 1 to Regulatory Guide 1.159 to provide guidance regarding the revised regulations. The Regulatory Guide includes explanations, definitions and examples of documents related to the financial assurance process, including recommended language to be included in nuclear decommissioning trust and financial guarantee documents. The amended regulations and the revised Regulatory Guide were generated by the NRC largely to take into account the fact that the ownership of nuclear generating facilities was being transferred from regulated utilities to non-regulated utilities, resulting in a reduction in regulatory oversight by the respective state PUC and the FERC. Regulatory Guide 1.159 contains provisions that are specifically applicable to non-regulated utilities and also contains the recommended format for NDT trust documents and letters of financial assurance to be submitted to the NRC. Regulatory Guide 1.159 states that utilities will be allowed a 2% credit (the differential between the assumed rate of return (after-tax for investor-owned utilities) and the escalation rate for the cost of decommissioning) in making their financial assurance determinations. This 2% credit would be applicable only until the end of the operating license for companies which base their cost estimate on the “NRC minimum” formula. It is applicable throughout the decommissioning process for companies which base their cost estimate on a “site specific” cost estimate.

The NRC’s Section 10 regulations specify the minimum cost estimate (“NRC Minimum”) of the decommissioning liability that is to be used in each company’s financial assurance filing with the NRC, including the biennial decommissioning funding plans that were filed with the NRC on March 31, 2009 (see second paragraph on page 1). In 1986 dollars, the NRC Minimum was \$105 million for a pressurized water reactor (“PWR”) and \$135 million for a boiling water reactor (“BWR”). The NRC Minimum covers only the cost of irradiating a nuclear generating plant and excludes the cost of other expenditures, such as spent fuel storage and disposal and/or restoring the property to its original condition (a process known as “greenfielding”). The \$105 million and \$135 million cost numbers are to be escalated each year using the formula $0.65L$ (labor) + $0.13E$ (energy) + $0.22B$ (waste burial) based on specific escalation factors. The NRC periodically publishes NUREG 1307, which updates the escalation factors to be used in the NRC’s cost escalation formula. Revision 13 of

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NUREG 1307, which was published in November 2008, contained waste burial factors as of July 2008, labor factors as of second quarter 2008 and energy factors as of April 2008. The labor factors are derived from Department of Labor statistics and are broken down by four regions (northeast, south, midwest and west). There are two energy factors: one applicable to PWRs and one applicable to BWRs. The waste burial factors are a function of whether the generating unit is part of the Atlantic Compact, a Non-Atlantic Compact or the Washington Compact and whether the burial contract is with a waste vendor or direct with a burial site. The Atlantic Compact consists of plants located in Connecticut, New Jersey and South Carolina and uses the burial site located in Barnwell, South Carolina. In publishing Revision 13 of NUREG 1307, the NRC acknowledged that the Barnwell site was no longer accepting burial waste from outside the Atlantic Compact as of July 1, 2008, but nonetheless assumed that the Atlantic Compact factors would apply to Non-Atlantic Compact entities.

In calculating the NRC Minimum for their biennial decommissioning funding plan that was filed with the NRC on March 31, 2009, most companies used updated labor factors as of 4Q 2008 and updated energy factors as of December 2008 together with the NRC's waste burial factors as of July 2008. Based on these factors, the NRC Minimum ranges from \$297 million to \$918 million in current dollars. The relatively low \$297 million amount is applicable to a PWR facility located in the State of Washington which benefits from a low-cost waste burial contract. Based on our calculations, the compound rate of increase of the NRC Minimum over the 22 years 1986 (the base costs were established in 1986) through 2008 ranges from 4.8% to 9.5%.

As noted earlier, in submitting their decommissioning financial assurance filings with the NRC, licensees have the option of using site specific cost estimates provided by an engineering firm such as TLG Services versus using the NRC Minimum. Site specific cost estimates may include the cost of spent fuel storage and/or the "Greenfield" costs of restoring the plant site to its original configuration before the generating facility was built. Greenfield costs can add over \$200 million to the NRC minimum cost estimate.

Current NDT Fund Status:

As of December 31, 2008, 28 investor-owned and approximately 28 public power utilities (excludes municipalities that have very small shares) had an ownership interest in 104 operating nuclear power plants. There has been a significant decline in the number of utilities owning operating nuclear plants due to plant shut-downs and subsequent decommissioning, sales of nuclear plants and utility mergers/acquisitions. The shut-down and decommissioned facilities include Long Island Lighting's Shoreham plant, Portland General Electric's Trojan plant, PS Colorado's Fort St. Vrain plant, and the plants of Connecticut Yankee, Maine Yankee and Yankee Atomic. At least three public power companies (Cajun Electric Co-op, City of Anaheim, CA. and the New York Power Authority ("NYPA")) have sold their interest in nuclear facilities. The NYPA sale was unusual in that NYPA has retained control of the NDT fund, largely to preserve its tax-exempt status. Seventeen investor-owned utilities (Alliant

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Energy, Boston Edison, Central Hudson G&E, CMS Energy, Connectiv, Consolidated Edison, GPU, Illinois Power, Madison G&E, New York State E&G, Niagara Mohawk, Northeast Utilities, Rochester G&E, Seabrook, Vermont Yankee, Wisconsin Energy and Wisconsin Public Service) have sold their nuclear interests to other companies. Energy Solutions Inc. is in the process of acquiring the shut-down Zion nuclear station (and the associated NDT) from Exelon and to commence the immediate decommissioning of this facility, a process which is expected to take approximately six years. Most of the acquisitions in nuclear facilities have been made by the unregulated subsidiaries of utility holding companies such as Constellation Energy, Dominion Resources, Entergy, Exelon and FPL Group. These unregulated entities generally do not meet the NRC's definition of a "cost of service" regulated utility; therefore, they are unable to use the "external sinking fund" method of funding assurance. In the early years of nuclear plant acquisitions, the purchase transaction included a "top-off" payment in order to fully fund the nuclear decommissioning liability via the NRC's "prepayment" funding assurance option. All "top-off" payments went into a non-qualified fund (see Tax Status in next section). The NRC has permitted this "prepayment" calculation to take into account the 2% credit discussed previously. Recent transactions have not necessitated "top-off" payments, and in at least one instance the NDT fund acquired by the buyer was less than the NDT fund previously maintained by the seller.

As of December 31, 2008, nuclear decommissioning trust funds totaled about \$34.9 billion. This amount excludes funds associated with plants in the final stages of decommissioning but includes the funds associated with non-operating facilities for which decommissioning has not yet commenced, including the Zion units, Millstone Unit 1 owned by Dominion Resources and TMI-2 owned by FirstEnergy. The \$34.9 billion of fund assets represents a decrease of about \$8.9 billion, or 20.3%, from approximately \$43.8 billion as of December 31, 2007. Taking into account the fact that there were about \$562 million of contributions to NDT funds in 2008, this decline of 20.3% in fund assets is consistent with the negative return of 22.1% experienced by a weighted index comprised 60% S&P 500 and 40% Barclays Capital Aggregate - - - an allocation which is relatively close to the overall asset allocation for NDT funds. The \$34.9 billion includes only \$53 million of internal reserves versus \$218 million at the end of 2004 and \$530 million at the end of 2003. Internal reserves have declined the past few years as a result of companies funding their NDT funds with securities as opposed to accounting assets. The \$562 million of contributions in 2008 was about the same as in 2007. Contributions have declined substantially from \$664 million in 2006, \$800 million in 2005, \$1 billion in 2004, \$1.2 billion in 2003 and the \$1.5 billion to \$1.6 billion for several years prior to 2003. The decline in annual contributions is due largely to the acquisitions by non-regulated utilities resulting in the pre-funding of the liability and a large number of license extensions resulting in a spreading out of the contribution period and therefore reducing the amount of the annual contribution.

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Whereas NDTs of public power utilities are not subject to tax due to their tax-exempt status, the NDTs of investor-owned utilities (“IOUs”) are subject to tax. The Federal tax rules that apply to the NDTs of IOUs are contained in Internal Revenue Code (“IRC”) Section 468A that became effective July 18, 1984, and which was subsequently amended twice by Congress effective January 1, 1993, and also January 1, 2006. Prior to January 1, 2006, Section 468A provided that a utility was permitted to make a deductible contribution to a “Qualified fund” that was the lesser of the amount approved by its regulatory commission through a “cost of service” rate setting proceeding or the ruling amount approved by the IRS. The ruling amount was based on a formula that relates to the operating license life of the plant, the in-service date of the plant and July 18, 1984. Very simplistically, for any unit placed in service after July 18, 1984, all contributions could be made to a “Qualified fund” if the contributions were included in “cost of service.” For any unit placed in service prior to July 18, 1984, a “qualifying percentage” allocation of the annual contributions would be made between the “Qualified” and the “Non-Qualified” funds. For example, a unit with an operating license of 40 years placed in service in 1974 would have a “qualifying percentage” of 75%; therefore, the utility would make 75% of its “cost of service” contributions to a Qualified fund (75% = 30 years from 1984 to 2014 divided by 40 years from 1974 to 2014) and 25% to a Non-Qualified fund. Importantly, there are no limitations regarding the contributions that a utility can make to a Non-Qualified NDT if the source of the funds is not “cost of service.” Under the Federal tax code, NDTs of IOUs are generally treated as corporations. Until January 1, 1994, the Federal taxable income for both Qualified and Non-Qualified funds was taxed at the applicable tax rate for corporations (currently 35%). This continues to be the case for Non-Qualified funds. Effective January 1, 1994, Qualified funds have been subject to their own unique Federal tax rate that was 22% in 1994 and 1995 and has been 20% beginning in 1996. Non-Qualified funds benefit from the Federal dividends received deduction (“DRD”), which is currently 70%. Therefore, only 30% of the income received from equity investments in Non-Qualified funds is taxable at the Federal level.

As a result of the passage of the Energy Policy Act of 2005, Section 468A was modified effective for tax years beginning after December 31, 2005. These modifications included the elimination of the “cost of service” and “qualifying percentage” elements previously included in Section 468A for the purpose of determining the annual contributions to Qualified NDT funds. In December 2007, the IRS issued regulations relating to deductions for contributions to Qualified funds in order to implement the provisions of the Energy Policy Act of 2005. As a result of this legislation and the associated regulations, after submitting a ruling request to the IRS containing the assumptions utilized in determining the basis of its contributions, all future contributions can be made to a Qualified fund. In addition, a “special transfer” of cash or property (ie., stocks and bonds) is permitted from the existing Non-Qualified fund to the Qualified fund. No gain or loss is to be recognized for any “special transfer.” The amount of the “special transfer” is the “non-qualifying” percentage times the present value of the decommissioning expenditures. The “special transfer”

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amounts are to be deductible ratably over the remaining “estimated useful life” of the generating facility. For regulated plants, this “estimated useful life” is defined as the period that begins with the year of the “special transfer” and ends with the year that the plant will no longer be included in the taxpayer’s rate base as determined in the first ratemaking proceeding involving the plant. For non-regulated plants, the deduction period ends on the last day of the estimated useful life of the plant as determined when the plant was placed in service. The deduction amount for the “special transfer” is limited to the lesser of the fair market value of the property contributed or the taxpayer’s cost basis in the property. Regulated plants submitting ruling requests to the IRS regarding their Qualified fund contributions may utilize the information and assumptions used by their public utility commission (“PUC) in determining decommissioning costs included in cost of service or, alternatively, may use other reasonable assumptions. Deregulated utilities may utilize assumptions used by a PUC that formerly had regulatory jurisdiction over the applicable generating plant or may utilize assumptions underlying the taxpayer’s most recent financial assurance filing with the Nuclear Regulatory Commission.

As noted above, annual Qualified fund contributions (as opposed to “special transfers”) are a deductible expense for tax purposes in the year of the contribution. Contributions made by March 15 of each year may be included as a deductible expense for the prior calendar year. Monies withdrawn from a Qualified fund become taxable income to the corporation. However, the corporation is able to take a simultaneous offsetting deduction for the related nuclear decommissioning expenditures. Contributions to Non-Qualified funds are not deductible at the time of their contributions. Non-Qualified funds are Grantor Trusts and the monies withdrawn from the trust spent on decommissioning become a deductible expense to the corporation at the time of the expenditure. A utility with a Non-Qualified fund will want to liquidate the Non-Qualified fund before the Qualified fund both to take timely advantage of this deduction as well as the lower income tax rate on the Qualified fund.

Depending on the applicable state law and/or the location of the trustee for the Trust, NDT funds of IOUs may also be subject to state income tax. In most states, income on US Treasuries and in-state municipal bonds is exempt from state tax. Through judicious location of the Qualified Trust, state taxes can often be avoided. Recognizing the benefits of maximizing after-tax return on NDT assets, legislation was enacted in Illinois several years ago that specifically exempts the taxable income of NDT funds of Illinois utilities from state tax.

Due to the taxable nature of Qualified and Non-Qualified NDT funds, the trustees and investment managers of these funds have developed expertise regarding tax accounting, scientific amortization and after-tax rate of return calculation capability. In March 2003, the Association for Investment Management and Research (subsequently renamed CFA Institute) issued revised Performance Presentation Standards (“the AIMR-PPS[®]” – *see footnote*) that became effective January 1, 2005. This revision

Footnote: AIMR-PPS[®] and GIPS[®] are registered trademarks owned by the CFA Institute.

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included modified after-tax provisions, which have been incorporated in the Global Investment Performance Standards (“GIPS[®]” – *see footnote on prior page*) Guidance Statement effective January 1, 2006, specifies the methodology that is to be used for calculating after-tax returns for taxable portfolios, such as NDT funds, and the format for the presentation of after-tax composite returns for taxable portfolios. Among the more important aspects of the After-Tax GIPS are the requirements that after-tax return for each account in a composite be calculated on the basis of the “anticipated” tax rate applied to taxable income and realized gains. The “anticipated” tax rate should include the impact of state income taxes, if applicable.

Commingling: The NRC mandates that each licensee maintain a separate trust for its interest in each nuclear generating facility. For example, if a utility owns four generating facilities, it will need four separate trusts. In addition, the NRC requires that a separate accounting be made for funds associated with the NRC’s minimum financial assurance requirements and funds being accumulated for other expenditures, such as spent fuel storage and/or complete dismantlement of the generating facility. Furthermore, because the tax status is different for Qualified and Non-Qualified funds, a separate trust would be required for each type of fund for each unit. In our example of four generating units with both a Qualified fund and a Non-Qualified fund for each unit, eight separate trusts would be required. However, this does not mean that eight separate portfolios need to be maintained. Instead, the client sponsor would preferably have one commingled portfolio for the Qualified funds and one commingled portfolio for the Non-Qualified funds. The IRS issued Revenue Procedure 94-75 on December 6, 1994, which provides guidance on how Qualified funds can be commingled without incurring adverse tax consequences. The commingling of these funds can include the commingling associated with the use of multiple managers.

License Transfers:

As mentioned earlier, several nuclear generating plant licenses have been transferred as a result of the sale of nuclear generating facilities. The IRS has issued several letter rulings that preserve the tax status of transferred Qualified NDT funds and also permit this transfer to be tax-free for both the seller and the buyer. However, transfers involving taxable investor-owned utilities have significant tax implications if Non-Qualified nuclear decommissioning funds are involved. These Non-Qualified funds can be substantial in those instances where significant “top-off” contributions were made by the seller in order to meet the NRC’s minimum financial assurance test. On September 16, 2004, the IRS issued rules and regulations entitled “Treatment of Certain Nuclear Decommissioning Funds for Purposes of Allocating Purchase Price in Certain Deemed and Actual Asset Acquisitions”. Under IRS regulations, the purchaser of a nuclear generating facility is not able to include the nuclear decommissioning liability in the cost basis of the transaction. This fact may have negative consequences regarding the economics of a transaction. In the transfer of the Point Beach nuclear station in 2007, the seller of the plant obtained a letter ruling from the IRS that resulted in the disqualification of the Qualified fund. The principal reason that this result was sought was so that the seller could retain a portion of the Qualified fund assets as well as all of the Non-Qualified fund assets.

Permissible Investments (Page 8 of 11):

When enacted in 1984, Section 468A specified that a Qualified fund could only be invested in “black lung” assets (treasuries, municipal bonds, and bank CDs). In 1992, Section 468A was amended by Congress so that investment restrictions were dropped effective January 1, 1993. NDT funds that are subject to FERC regulation are governed by the FERC mandate that the funds be managed externally under the “prudent investor” standard. The NRC states in its regulations that the decommissioning trust should not be under the “administrative control of the licensee” and that the day-to-day investment decisions should be made by the trustee or investment manager and not by the licensee. The NRC generally defers to either the state PUC or the FERC regarding specific investment guidelines. However, for NDT funds of non-regulated utilities, the NRC prohibits investments in securities of the operator of the facility related to the NDT funds or its affiliates (also a FERC requirement) or in securities of power reactor licensees. With regard to Rule 144A securities, as Qualified NDT funds are not specifically identified by the regulations as a Qualified Institutional Buyer (“QIB”), it is the opinion of several law firms that Qualified NDT funds are prohibited from investing in Rule 144A securities.

Some state PUCs have developed specific investment guidelines with regard to NDT funds. For example, all utilities in Texas are limited to a maximum equity allocation of 60% when the weighted average remaining life of the decommissioning liability exceeds 5 years (30% between 2.5 and 5 years and 0% when less than 2.5 years) and at least 70% of the aggregate market value of equity investments must have a quality rating and the dollar-weighted quality rating of the holdings with ratings must be equivalent to the equal-weighted rating of the holdings in the S&P 500 Index. Investor-owned utilities in California are limited to a maximum equity allocation of 60% for their Qualified funds and 50% for their Non-Qualified funds and have a limit of 20% for their allocation to international equities in their Qualified funds. In addition, each investor-owned utility in California is required to have a three person external NDT investment committee to oversee that utility’s NDT fund.

Several of the public power utilities with NDT funds are governed by state law with regard to permissible investments. In most cases where this is applicable, the NDT funds are restricted to investment grade fixed income securities (ie, investments in equity securities are prohibited). Furthermore, the fixed income investments are often further limited to US Treasuries, Agencies and/or securities of state and local governments (ie, taxable and tax-exempt municipal bonds).

The assumed rate of return for NDT funds utilized by utilities in their funding analysis is largely a function of the assumed asset allocation. For various reasons, including those outlined above, utilities have deployed a wide range of asset allocation strategies. The average overall equity allocation is about 60%. Taking into consideration the fact that the expected life of an NDT fund is very likely to exceed 10 years and may well exceed 25 years due to license extensions, a strong argument can be made for a full allocation to equities.

Accounting (Page 9 of 11):

FAS 143 is an accounting rule effective for financial statements issued for fiscal years beginning after June 15, 2002. FASB 143 requires nuclear utilities to accurately reflect the current cost of their decommissioning liability as a separate item. Deregulated utilities are expected to be the most severely impacted by FASB 143.

FASB 115, which has been effective for fiscal years ending after December 15, 1993, contains specific requirements for the reporting of NDT fund assets. The reporting requirements of FAS 115 are as follows assuming that an NDT portfolio is classified as Available for Sale as opposed to Trading or Held to Maturity:

(1) gross purchases, sales and maturities for each security classification for the purpose of classifying these as cash flows from investing activities and reported in the statement of cash flows.

(2) aggregate fair value, gross unrealized holding gains, gross unrealized holding losses and amortized cost basis by major security type as of each date for which a statement of financial position is presented.

(3) information as of the date of the most recent statement of financial position concerning contractual maturities for investments in debt securities, such as maturities ranging from (a) 1 to 5 years, (b) 5 to 10 years and (c) over 10 years.

(4) information for each period for which the results of operations are presented for (i) proceeds from sales and gross realized gains and gross realized losses on those sales; (ii) the specific method that was used to calculate the realized gain or realized loss, such as whether average cost, first-in/first out, last-in/first out, high cost, low cost or some other methodology was used; (iii) the change in net unrealized gain or loss that has been included in the separate component of shareholders' equity during the reporting period.

(5) for individual securities whose fair value has declined below amortized cost on a basis that is determined to be other than temporary, the cost basis of the individual security shall be written down to fair value as a new cost basis and the amount of the write-down shall be included in earnings (ie, accounted for as a realized loss) and the new cost basis shall not be changed for subsequent recoveries in fair value but this increase in fair value shall be included in the separate component of equity until realized through the sale of the security.

(6) unrealized holding gains and losses for securities not classified as "other than temporarily impaired" shall be excluded from earnings and reported as a net amount in a separate component of shareholders' equity until realized through the sale of the security.

(7) dividend and interest income, including amortization of debt premiums and discounts, shall be included in earnings.

On February 6, 2007, the Edison Electric Institute ("EEI") addressed a letter to the Chief Accountant of the Securities and Exchange Commission ("SEC") as a result of a meeting of several parties (including EEI, the SEC, accounting firms and individual utilities) regarding the expectations of the SEC concerning the application of the SEC's

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Staff Accounting Bulletin (“SAB”) concerning the Other Than Temporary Impairment (“OTTI”) provisions of FAS 115. The letter from the EEI addressed the following three topics: (1) write-downs of individual securities per the OTTI provisions are to occur starting in 2006, (2) the SEC staff will not broadly grant permission to transfer securities from the available-for-sale classification to the trading classification but will respond to individual requests and (3) the SEC staff will leave it up to the discretion of individual companies whether or not they wish to amend their trust agreements to accommodate language for the recovery period of impaired assets. Effectively, the SEC’s position is that an individual security is considered impaired, and therefore must be written down, when the security’s cost exceeds its market value at any given measurement period (presumably quarterly). As a result of each write-down, the lower market value becomes the new cost basis of the security. Whereas regulated utilities may be able to apply FAS 71 and defer as a regulatory asset a write-down associated with an “other than temporary impairment,” non-regulated utilities are not able to do so. In order to implement the OTTI provisions of FAS 115, companies have had to create two sets of books - - - one set for book purposes to include the impact of an impairment write-down and a second set for tax purposes that reflects the fact that the tax basis remains unchanged since the “impaired” holding is not sold.

The issue of classifying the NDT portfolio as “trading” as opposed to “available-for-sale” is important with regard to the administrative issues associated with OTTI. A portfolio, or individual securities, that are classified as “trading” are marked-to-market at each measurement period. Therefore, a book gain or loss is taken for each market price change that occurs between measurement periods. A significant benefit of the trading classification is that the security (or the portfolio) benefits from upward price movements whereas only write-downs occur under the available-for-sale classification until the security is actually sold. Companies may be able to reclassify either individual securities or possibly their entire NDT portfolio as trading if they elect to implement the “Fair Value” provisions of FAS 157 and FAS 159, which are applicable for fiscal years beginning after December 15, 2007.

On April 9, 2009, FASB issued FAS 115-2 for the purpose of clarifying the impairments and associated write-downs of fixed income investments. As result of this revised guideline, investment managers of non-regulated NDT funds are being requested by their clients to provide the following three representations as of the end of each calendar quarter with regard to NDT fixed income investments: (1) a listing of impaired securities which the manager intends to sell; (2) a listing of impaired securities which the manager would be required to sell; (3) a listing of impaired securities which the manager believes have incurred a credit loss together with a quantification of this credit loss. If an impaired fixed income investment is not listed by the investment manager under any of the three representations indicated, the assumption made is that the investment will be held to maturity and that the issuer will make timely payment of principal and interest and therefore no write-down of the impairment will be required.

Revised Funding Rules Applicable to New Generating Facilities for Utilities Operating in Texas (Page 11 of 11):

In anticipation of the expected construction of new nuclear generating facilities in Texas, the Texas state legislature passed legislation (PURA Section 39.206) and the Texas PUC has implemented regulations (PUC Substantive Rule Section 25.303) applicable to the first six nuclear generating units under construction by January 15, 2015, that elect to use a Texas ratepayer-backed NDT as a means of complying with the NRC's and the state's financial assurance requirements. The eligible generating companies that choose this election are able to make an annual NDT contribution based on calculations that include the decommissioning cost estimate and the remaining years of the license life of the generating plant. The eligible generating companies must also provide additional financial assurance that funds will be available to satisfy 16 years of annual NDT contributions in the form of (a) cash, (b) corporate guarantee based on maintaining specified financial measures, (c) surety bond or insurance or (d) another method acceptable to the PUC. If an eligible generating company that chooses this election defaults in making an annual NDT contribution and its financial assurance obligations are insufficient, the PUC will establish a non-bypassable charge to be recovered from retail electric customers in Texas. The regulations require that annual reports be filed with the PUC and that a decommissioning cost study be submitted to the PUC every three years.

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