

106TH CONGRESS  
1ST SESSION

# S. 1793

To ensure that there will be adequate funding for the decommissioning of  
nuclear power facilities.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1999

Mr. DOMENICI introduced the following bill; which was read twice and referred  
to the Committee on Environment and Public Works

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## A BILL

To ensure that there will be adequate funding for the  
decommissioning of nuclear power facilities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Nuclear Decommis-  
5       sioning Assurance Act of 1999”.

6       **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—Congress finds that—

8               (1) full, safe decommissioning of nuclear power  
9       plants is a compelling Federal interest, in that—

1 (A) the public health and safety and the  
2 protection of the environment can be guaran-  
3 teed only if nuclear power plants are adequately  
4 decommissioned at the end of their useful lives;  
5 and

6 (B) decommissioning obligations cannot be  
7 avoided, abandoned, or mitigated, as a matter  
8 of public health and safety;

9 (2) electric utilities that own nuclear power  
10 plants must be able to collect adequate revenues to  
11 ensure that the utilities can satisfy the obligation to  
12 fully decommission nuclear power plants in accord-  
13 ance with standards established by the Nuclear Reg-  
14 ulatory Commission;

15 (3) the authority of the Nuclear Regulatory  
16 Commission to ensure that utilities are able to col-  
17 lect adequate funds so that they can satisfy the de-  
18 commissioning obligation is limited by the fact that  
19 the Commission does not directly establish rates for  
20 electric services;

21 (4) many nuclear decommissioning trust funds  
22 are not adequate to meet decommissioning obliga-  
23 tions, and the current electric rates of collection are  
24 not adequate to ensure that there will be adequate  
25 funds at the time of decommissioning.

1           (5) potential restructuring of the electric utility  
2           industry will exacerbate the problem, because com-  
3           petitive pressure is expected to be placed on current  
4           rates, thereby threatening the ability of utility enti-  
5           ties to recover funds for decommissioning in electric  
6           rates; and

7           (6) there is a Federal interest in establishing a  
8           national policy to ensure that electric utilities that  
9           own nuclear power plants can recover funds suffi-  
10          cient to satisfy the decommissioning obligation.

11       (b) PURPOSES.—The purposes of this Act are—

12           (1) to ensure that electric utilities that own  
13           commercial nuclear electric generating plants will be  
14           able to satisfy the obligation to decommission the  
15           plants, as established by the Nuclear Regulatory  
16           Commission; and

17           (2) to provide ratemaking bodies, including the  
18           Federal Energy Regulatory Commission, with suffi-  
19           cient authority to provide for recovery of funds for  
20           decommissioning.

21   **SEC. 3. DEFINITIONS.**

22       In this Act:

23           (1) DECOMMISSION.—The term “decommis-  
24           sion” has the meaning given the term in section

1 50.2 of title 10, Code of Federal Regulations (or any  
2 successor regulation).

3 (2) DECOMMISSIONING OBLIGATION.—The term  
4 “decommissioning obligation” means the obligation  
5 to pay costs associated with the measures necessary  
6 to ensure the continued protection of the public from  
7 the dangers of any residual radioactivity or other  
8 hazards present at a facility when a nuclear unit is  
9 decommissioned.

10 (3) NUCLEAR DECOMMISSIONING TRUST  
11 FUND.—The term “nuclear decommissioning trust  
12 fund” has the meaning given the term “external  
13 sinking fund” in section 50.75(e)(1)(ii) of title 10,  
14 Code of Federal Regulations (or any successor regu-  
15 lation).

16 (4) STATE COMMISSION.—The term “State  
17 commission” has the meaning given the term in sec-  
18 tion 3 of the Federal Power Act (16 U.S.C. 796).

19 **SEC. 4. NUCLEAR DECOMMISSIONING ASSURANCE DETER-**  
20 **MINATION BY THE NUCLEAR REGULATORY**  
21 **COMMISSION.**

22 (a) PETITION.—

23 (1) IN GENERAL.—A licensee under part 50 of  
24 title 10, Code of Federal Regulations may petition

1 the Nuclear Regulatory Commission for a deter-  
2 mination of whether—

3 (A) adequate amounts have been deposited  
4 or are being deposited in the nuclear decommis-  
5 sioning trust fund of the licensee; and

6 (B) the future funding for any nuclear  
7 power plant owned in whole or in part by the  
8 licensee is assured.

9 (2) CONTENTS.—A petition under paragraph  
10 (1) shall disclose—

11 (A) the licensee's current minimum  
12 amount established by the Nuclear Regulatory  
13 Commission under section 50.75 of title 10,  
14 Code of Federal Regulations for each facility  
15 for which the licensee holds a license;

16 (B) the currently effective rates to recover  
17 costs for decommissioning obligations as estab-  
18 lished by the Commission or State commissions,  
19 as appropriate;

20 (C) the amount that has been deposited in  
21 the nuclear decommissioning trust fund;

22 (D) the planned rate and timing of collec-  
23 tion of the costs of the decommissioning obliga-  
24 tion through the projected useful life of the fa-  
25 cility; and

1 (E) any other information pertinent to the  
2 continuing assurance of funding of the nuclear  
3 decommissioning trust fund.

4 (b) DETERMINATION.—Not later than 180 days of  
5 receipt of a petition under paragraph (1), the Nuclear  
6 Regulatory Commission shall issue a determination re-  
7 garding whether the nuclear decommissioning trust fund  
8 and the currently approved level of rates to recover the  
9 costs of the decommissioning obligation are adequate to  
10 ensure full and safe decommissioning of the facility.

11 (c) CONSIDERATIONS.—In making a determination  
12 under subsection (b), the Nuclear Regulatory Commission  
13 shall consider.—

14 (1) the current level of funds in the nuclear de-  
15 commissioning trust fund;

16 (2) the adequacy of the currently approved  
17 rates to recover the costs of the decommissioning ob-  
18 ligation;

19 (3) the assurance of continuing recovery of such  
20 costs through rates;

21 (4) the timing of the recovery of such costs rel-  
22 ative to the projected useful life of the plant; and

23 (5) any other information that the Nuclear  
24 Regulatory Commission considers pertinent to a de-

1        termination of the necessary assurance of adequate  
2        funding.

3        (d) ADEQUACY OF MINIMUM AMOUNTS.—Nothing in  
4 this Act precludes the Nuclear Regulatory Commission  
5 from revising or reconsidering the adequacy of the min-  
6 imum amounts established under section 50.75(c) of title  
7 10, Code of Federal Regulations.

8        (e) NOTICE.—The Nuclear Regulatory Commission  
9 shall issue notice of its finding to the licensee, the Federal  
10 Energy Regulatory Commission, and any other party of  
11 record.

12 **SEC. 5. AMENDMENT OF THE FEDERAL POWER ACT.**

13        (a) DECLARATION.—Section 201 of the Federal  
14 Power Act is amended by adding at the end the following:

15        “(h) DECLARATION REGARDING DECOMMISS-  
16 SIONING.—The decommissioning of nuclear power plants  
17 licensed by the Commission is affected with a public inter-  
18 est, and the Federal regulation of matters relating to de-  
19 commissioning of nuclear power plants, to the extent pro-  
20 vided in this part, is necessary in the public interest.”.

21        (b) NUCLEAR DECOMMISSIONING ASSURANCE.—Part  
22 II of the Federal Power Act (16 U.S.C. 824 et seq.) is  
23 amended by adding at the end the following:

24 **“SEC. 215. NUCLEAR DECOMMISSIONING ASSURANCE.**

25        “(a) COST RECOVERY IN WHOLESALE RATES.—

1           “(1) IN GENERAL.—To the extent that the  
2           costs of a decommissioning obligation are recovered  
3           in wholesale rates, an electric utility that owns a nu-  
4           clear power facility in whole or in part may apply to  
5           the Commission for an order approving rates and  
6           charges in connection with the wholesale trans-  
7           mission or sale of electricity to ensure collection of  
8           revenues necessary to ensure that there will be ade-  
9           quate funding to satisfy the decommissioning obliga-  
10          tion of the electric utility in establishing rates and  
11          charges.

12          “(2) NUCLEAR DECOMMISSIONING ASSURANCE  
13          DETERMINATION.—In a proceeding under this sec-  
14          tion, any nuclear decommissioning assurance deter-  
15          mination made in a proceeding under section 4 of  
16          the Nuclear Decommissioning Assurance Act of  
17          1999 shall be conclusive.

18          “(3) DENIAL OF REQUEST.—If the Commis-  
19          sion, by order or by failure to act with 180 days of  
20          the filing of a petition, denies in whole or in part an  
21          application under paragraph (1) or otherwise fails to  
22          allow collection of costs in rates necessary to ensure  
23          adequate funding under section 4 of the Nuclear De-  
24          commissioning Assurance Act of 1999, the electric



1 utility may seek review of the action under section  
2 313(b).

3 “(b) COST RECOVERY IN RETAIL RATES.—To the ex-  
4 tent that the costs of the decommissioning obligation are  
5 recovered in retail rates, in a proceeding before a State  
6 commission initiated by an electric utility that owns a nu-  
7 clear power plant in whole or in part for an order approv-  
8 ing rates and charges in connection with the distribution  
9 of electricity, any nuclear decommissioning assurance de-  
10 termination made by the Commission under section 4 of  
11 the Nuclear Decommissioning Assurance Act of 1999 shall  
12 be given due consideration, so as to ensure collection of  
13 revenues necessary to ensure adequate funding of the nu-  
14 clear-owning utility’s nuclear decommissioning obligations.

15 “(c) RATES, TERMS, AND CONDITIONS.—

16 “(1) IN GENERAL.—The Commission and the  
17 State commissions shall establish rates, terms, and  
18 conditions in response to an application under sub-  
19 section (a) or (b) not later than 180 days after the  
20 date of submission of the application.

21 “(2) FAILURE TO ACT.—For purposes of sec-  
22 tion 313(b), failure of the Commission to comply  
23 with paragraph (1) shall be considered a denial and  
24 shall be appealable as a final agency action.

1       “(d) DENIAL OF REQUEST BY STATE COMMISSION.—  
2   Notwithstanding any other provision of law, if a State  
3   commission, by order or by failure to act within 180 days  
4   of the filing of a petition, denies in whole or in part the  
5   request under subsection (b) or otherwise fails to allow  
6   collection of costs in rates necessary to ensure adequate  
7   funding under section 4(b) of the Nuclear Decommis-  
8   sioning Assurance Act of 1999, the electric utility may  
9   apply to the United States district court for an order re-  
10   quiring the State commission to establish rates, terms,  
11   and conditions necessary to ensure adequate funding  
12   under section 4(b) of the Nuclear Decommissioning Assur-  
13   ance Act of 1999.”.

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