

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Public Utilities Act is amended by changing Section 8-508.1 as follows:

(220 ILCS 5/8-508.1) (from Ch. 111 2/3, par. 8-508.1)

Sec. 8-508.1. (a) As used in this Section:

(1) "Decommissioning" means the series of activities undertaken at the time a nuclear power plant is permanently retired from service to ensure that the final entombment, decontamination, dismantlement, removal and disposal of the plant, including the plant site, and of any radioactive components and materials associated with the plant, is accomplished in compliance with all applicable Illinois and federal laws, and to ensure that such final disposition does not pose any threat to the public health and safety.

(2) "Decommissioning costs" means all reasonable costs and expenses incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant at the time of decommissioning, including all expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other

planning expenses, and to be incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses, less proceeds of insurance, salvage or resale of machinery, construction equipment or apparatus the cost of which was charged as a decommissioning expense.

(3) "Decommissioning trust" or "trust" means a fiduciary account in a bank or other financial institution established to hold the decommissioning funds provided pursuant to subsection (b)(2) of this Section for the eventual purpose of paying decommissioning costs, which shall be separate from all other accounts and assets of the public utility establishing the trust.

(4) "Nuclear power plant" or "plant" means a nuclear fission thermal power plant. Each unit of a multi-unit site shall be considered a separate plant.

(b) By 90 days after the effective date of this amendatory Act of 1988, or by the date that the unit satisfies the criteria used by the Internal Revenue Service for determining when depreciation commences for federal income tax purposes on a new generating unit, whichever is later, every public utility that owns or operates, in whole or in part, a nuclear power plant shall:

(1) establish 2 decommissioning trusts, which shall be a "tax qualified" decommissioning trust and a "non-tax qualified" decommissioning trust and shall hold the

decommissioning funds established by the public utility for all nuclear power plants pursuant to subsection (b) (2) of this Section;

(2) establish 2 decommissioning funds for each such plant, each of which shall be held for a plant as a separate account in a decommissioning trust; and

(3) designate an independent trustee, subject to the approval of the Commission, to administer each of the decommissioning trusts.

(c) The 2 decommissioning trusts shall be known as the "tax qualified" decommissioning trust and the "non-tax qualified" decommissioning trust respectively. Each trust shall be established and maintained as follows:

(1) The "tax qualified" trust shall be established and maintained in accordance with Section 468A of the Internal Revenue Code of 1986 or any successor thereto and shall be funded by the public utility for each such power plant through annual payments by the public utility that shall not exceed the maximum amount allowable as a deduction for federal income tax purposes for the year for which the payments were made, in accordance with Section 468A of the Internal Revenue Code of 1986 or any successor thereto.

(2) The "non-tax qualified" decommissioning trust shall be funded by the public utility for each such power plant through annual payments by the public utility that shall consist of the difference between the total amounts

of decommissioning expenses collected after the effective date of this amendatory Act of 1988 through rates and charges from the public utility's customers as provided by the Commission minus the amounts contributed to the "tax qualified" trust as provided by subsection (c) (1) of this Section and deductible for federal income tax purposes in accordance with Section 468A of the Internal Revenue Code of 1986 or any successor thereto.

(3) The following restrictions shall apply in regard to administration of each decommissioning trust:

(i) Distributions may be made from a nuclear decommissioning trust only to satisfy the liabilities of the public utility for nuclear decommissioning costs relating to the nuclear power plant for which the decommissioning fund was established and to pay administrative costs, income taxes and other incidental expenses of the trust.

(ii) Any assets in a nuclear decommissioning trust that exceed the amount necessary to pay the nuclear decommissioning costs of the nuclear power plant for which the decommissioning fund was established shall be refunded to the public utility that established the fund for the purpose of refunds or credits, as soon as practicable, to the utility's customers.

(iii) In the event a public utility sells or otherwise disposes of its direct ownership interest,

or any part thereof, in a nuclear power plant with respect to which a nuclear decommissioning fund has been established, the assets of the fund shall be distributed to the public utility to the extent of the reductions in its liability for future decommissioning after taking into account the liabilities of the public utility for future decommissioning of such nuclear power plant and the liabilities that have been assumed by another entity. The public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full amount of the reductions in its liability for future decommissioning.

(iv) The trustee shall invest the "tax qualified" trust assets only in secure assets that are prudent investments for assets held in trust and in such a way as to attempt to maximize the after-tax return on funds invested, subject to the limitations specified in Section 468A of the Internal Revenue Code of 1986 or any successor thereto.

(v) The trustee shall invest the "non-tax qualified" trust assets only in secure assets that are prudent investments for assets held in trust and in such a way as to attempt to maximize the after-tax return on funds invested. However the trustee shall not invest any portion of the "non-tax qualified" trust's

funds in the securities or assets of any operator of a nuclear power plant.

(vi) The "non-tax qualified" trust shall be subject to the prohibitions against self-dealing applicable to the "tax qualified" trust as specified in Section 468A of the Internal Revenue Code of 1986, or any successor thereto.

(vii) All income earned by the trust's funds shall become a part of the trust's funds and subject to the provisions of this Section.

(viii) The Commission may adopt by rule or regulation such further restrictions as it deems necessary for the sound management of the trust's funds, consistent with the purposes of this Section.

(d) By 90 days after the effective date of this amendatory Act of 1988, the Commission shall determine an appropriate method to segregate, either internally or externally, all decommissioning funds collected prior to the effective date of this amendatory Act of 1988 by the utility from its customers, and shall order any change in past decommissioning funding methods that the Commission finds necessary. In making its determination of the appropriate funding method, the Commission shall give consideration to, but not be limited by, all applicable federal regulations. The change in funding method shall be phased-in over an appropriate period of time.

(e) The trustee of a trust shall report annually to the

Commission, or more frequently if ordered by the Commission.

The report shall include:

- (1) the trust's State and federal tax returns;
- (2) a report on the trust's portfolio of investments and the return thereon;
- (3) the date and amount of payments received by the trust from the public utility;
- (4) a copy of all correspondence between the trust and the Internal Revenue Service; and
- (5) any other information the Commission orders the trust to provide.

(f) A nuclear decommissioning trust established pursuant to this Section shall be exempt from taxation in Illinois.

(g) Beginning on or before May 1, 2020, and every 2 years thereafter, the owner or operator of each nuclear power plant in this State shall provide the Commission with a copy of the nuclear decommissioning funding assurance status report submitted to the Nuclear Regulatory Commission and, as applicable, to the Federal Energy Regulatory Commission. Beginning June 1, 2020, and every 2 years thereafter, the Commission shall provide the General Assembly with a copy of the nuclear decommissioning funding assurance status report for shutdown units as submitted by the owner or operator of a nuclear power plant in this State to the Nuclear Regulatory Commission and, as applicable, to the Federal Energy Regulatory Commission.

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