MEMO# 2163

September 4, 1990

INSTITUTE FILES COMMENTS WITH THE IRS ON NUCLEAR DECOMMISSIONING FUND REGULATIONS UNDER CODE SECTION 468A

1 */ NDFs are trust funds established by electrical utilities to accumulate the money necessary to decommission nuclear power plants. September 4, 1990 TO: SEC RULES COMMITTEE NO. 47-90 TAX COMMITTEE NO. 27-90 RE: INSTITUTE FILES COMMENTS WITH THE IRS ON NUCLEAR DECOMMISSIONING FUND REGULATIONS UNDER CODE SECTION 468A ____ Attached is a copy of the comments filed by the Institute on the Proposed Regulations issued by the Internal Revenue Ser- vice under section 468A of the Internal Revenue Code (see Insti- tute Memorandum to Tax Committee No. 19-90, dated July 26, 1990). These proposed regulations would expand the permissible invest- ments of nuclear decommissioning funds ("NDFs") */1 to include shares of a regulated investment company ("RIC") which invests in certain federal and state obligations. Previously, the Institute had testified in favor of legislation which would accomplish this result (see the attached Institute statement dated March 9, 1990). The Institute comment letter states that it supports the proposed regulations with two changes. First, the proposed regu- lations would subject RICs in which NDFs invest to the self- dealing rules of the Black Lung Benefit Trust provisions of the Code. The Institute believes that these requirements are unnecessary because RICs are already subject to the self-dealing prohibitions of the Investment Company Act of 1940, and that additional, overlapping requirements would simply increase costs without adding to shareholder protection. The Institute also points out that the requirement that all shareholders in a RIC in which NDF's could invest be NDFs would be unworkable. The 1940 Act requires that every RIC have initial capital of $100,000 in order to make a public offering of shares. Pursuant to that requirement, fund sponsors typically purchase at least $100,000 of the RIC's shares and hold them for at least the 60-month period over which accounting guidelines require the RICs to amortize start-up expenses. The Institute therefore suggests that, similar to the exception provided in Code section 4982(f), an exemption be provided from the requirement that all share- holders be NDFs for up to $250,000 in shares held as a result of organizing the RIC. Thus, a non-NDF could provide the initial start-up capital for the RIC without disqualifying the RIC as a permissible investment for NDFs. We will keep you informed of further developments. David J. Managefrida, Jr. Assistant General Counsel Attachments DJM:bmb