

United States Senate

WASHINGTON, DC 20510

January 24, 2014

The Honorable Allison Macfarlane
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Macfarlane:

We write to follow up on our November 14, 2013 letter¹ in which we expressed our grave concerns about the potential that NRC staff were improperly directed to cease their regulatory scrutiny of whether there exist sufficient funds to operate Entergy's merchant nuclear fleet (which consists of the Pilgrim Nuclear Power Station in MA., Vermont Yankee in VT, Indian Point Energy Center and the James A. Fitzpatrick Nuclear Power Plant in NY, and the Palisades Power Plant in MI) after Entergy officials contacted senior NRC officials to complain about pending NRC oversight. We also learned that these same NRC staff were directed to refrain from attempting to determine whether other nuclear reactor licensees are maintaining sufficient operating funds for all licensees that have been found to have degraded safety measures and thus subject to additional NRC safety oversight.

To date, we have yet to receive a response to our letter. We have, however, been recently made aware that a NRC policy paper² was submitted to the Commission on November 22, 2013 that proposed to amend or even eliminate the requirements for financial qualification reviews for new merchant nuclear reactors altogether. This paper is notable in that three NRC economists who are reportedly the only current NRC employees who have ever conducted financial reviews of operating nuclear reactors filed a formal non-concurrence with this paper. The non-concurrence concludes that the NRC "financial staff does not agree that the rulemaking options presented in [the document] are prudent, justified or consistent with the NRC's mission to protect public health and safety... staff reiterates its position that merchant plant licensees require additional financial scrutiny reflected in the current regulatory framework due to their higher risks." We write to request information about the November 22, 2013 paper and the manner in which it was developed.

According to 10 CFR 50.33,³ licensees must provide reasonable assurance of sufficient funding to cover the costs of operations for the period of the license, including the costs associated with the personnel and equipment needed to operate the reactor safely. These

¹ http://www.markey.senate.gov/documents/2013-11-14_Macfarlane_NRC.pdf

² <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2013/2013-0124scy.pdf>

³ <http://www.nrc.gov/reading-rm/doc-collections/cfr/part050/part050-0033.html>

regulations themselves are derived from Section 182a of the Atomic Energy Act, which states that applications for a reactor license should include information needed for the Commission to ascertain the "financial qualifications of the applicant." The staff paper submitted to the Commission asks the Commission to authorize the staff to amend or rescind these requirements, despite the non-concurrences of the key NRC staff with subject matter responsibility in this area.

We have also been informed that earlier drafts of this staff paper also may have sought to eliminate the financial qualifications requirements for existing nuclear reactors, a policy change that could have been utilized to retroactively justify the improper direction to cease applying NRC regulations that was the subject of our November 14 letter.

So that we can understand more about the November 22 2013 paper sent to the Commission, we ask that in addition to the materials already requested on this topic (also reiterated below), you provide us with:


1. A copy of each draft of the November 22, 2013 NRC paper entitled "Policy Options For Merchant (Non-Electric Utility) Plant Financial Qualifications".
2. All documents (including emails, correspondence, meeting notes, telephone logs, calendar entries or other materials) related in any way to the development of the November 22, 2013 NRC paper entitled "Policy Options For Merchant (Non-Electric Utility) Plant Financial Qualifications", including any documents related to whether any portion of any draft of this paper would apply retroactively to the requests for additional information NRC technical staff wished to obtain (but were prohibited from requesting) from Entergy.
3. All documents (including emails, correspondence, meeting notes, telephone logs, calendar entries or other materials) that in any way relate to the statement in the November 22, 2013 paper that asserts that the history of the matter at hand indicates that the Commission believes that "any nexus between safety and the NRC's review of financial qualifications is indirect and of secondary importance to ensuring public health and safety."
4. Does the Commission currently believe that "any nexus between safety and the NRC's review of financial qualifications is indirect and of secondary importance to ensuring public health and safety?" If so, on what analysis does the Commission base this view (and please provide us with copies of any such materials)?
5. Although the November 22, 2013 paper is stated to apply only to new merchant nuclear reactor licenses, Rulemaking Options A and B presented to the NRC in the November 22, 2013 paper remove financial qualifications reviews from the reactor licensing basis. If the Commission proceeded with either of these options, does the Commission agree with the non-concurring NRC personnel that the NRC staff "would no longer have a regulatory basis to maintain existing financial support agreements implemented by license conditions for licensees?" If not, on what legal basis does the Commission disagree with the non-concurring NRC personnel?

Materials requested in the November 14, 2013 letter:

1. Please provide us with a copy of each of the RAIs that were prepared and approved for submittal to Entergy for its merchant reactors on June 5, 2013.
2. Please provide us with all documents (including emails, correspondence, meeting notes, telephone logs, calendar entries or other materials) related to the NRC decision not to issue and publish those RAIs to Entergy's merchant reactors.
3. For the past year, please indicate a) all dates on which Entergy personnel met with or spoke by telephone to any NRC personnel (including NRC staff, Commissioners and Commissioners' staff) on matters that are in any way related to compliance with or NRC efforts to assure compliance with 10 CFR 50.33, b) the titles of both the Entergy and NRC personnel with whom each such meeting or telephone call took place, c) any written communications provided by Entergy to the NRC during such meeting or telephone call.
4. Please provide us with all documents (including emails, correspondence, meeting notes, telephone logs, calendar entries or other materials) related to any NRC direction to its staff not to send any financial RAIs to licensees whose reactors are experiencing degraded safety indicators.
5. Please indicate, as a general matter, whether the Commission believes that its staff should be empowered and enabled to enforce NRC regulations in a uniform manner for all NRC licensees.

Thank you very much for your attention to this important matter. Please provide your response no later than close of business on January 29, 2014. If you have any questions or concerns please have your staff contact Michal Freedhoff (Senator Markey, 224-2742) or Jacob Smith (Senator Sanders, 224-5141).

Sincerely,



Edward J. Markey
United States Senator



Bernard Sanders
United States Senator