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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

August 1, 2002

Secretary
Att: Adjudications and Rulemakings Staff
Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Comments on Proposed Rulemaking Regarding Financial Information Requirements for Applications to Review or Extend the Term of an Operating License for a Power Reactor at 10 CFR Part 50.33

Dear Commissioners:

STAR Foundation, a non-profit public-interest organization based in East Hampton, New York, hereby offers the following comments with respect to the NRC proposed rule to eliminate the requirement that non-electric utility power reactor licensees submit financial qualifications information in their license renewal applications. STAR is also commenting on the proposal to require the submission of such information when utilities reorganize and operate as "non utility" generators. (Proposed Rule, June 4, 2002, *Federal Register*, Vol. 67, No. 104, pp. 38427)

The NRC's proposal to require financial qualification reviews when a nuclear generating utility reorganizes or transfers the ownership of its plants into "non utility" corporations is long overdue. STAR commends the NRC for proposing this change to 10 CFR Part 50.33. There is no substitute for such disclosure in light of the financial fragility of nuclear generating companies, lack of assured recovery of costs from a utility rate base, increasing bankruptcies by companies controlling nuclear plants (or decommissioning reactors), and the widespread use of multi-tiered holding companies and limited liability corporations (LLCs).

However, the NRC's proposal to eliminate financial disclosure obligations in 10 CFR 50.33 (f)(2) on non-utility nuclear power plant owners when they seek renewal of operating licenses—in many cases for up to 20 years—creates an information vacuum wherein NRC regulators would be placed, by design, in a state of not-so-blissful ignorance. STAR vigorously opposes NRC's proposal to reduce disclosure of financial qualifications of non-utility corporations upon license renewal. The rationale provided in the *Federal Register* notice for eliminating this disclosure and the attendant analysis is unpersuasive.

A formal and rigorous review at the time of license renewal for aging nuclear reactors is a particularly appropriate time to evaluate the financial requirements. It is at this point that a business plan can be evaluated over the proposed lifetime of a licensee's facility, just as the NRC

evaluated financial qualification upon initial licensing. The massive financial resources needed to address the safe and secure operations, make capital improvements to a complex 30-year old machine, add storage capacity for spent fuel, harden such spent fuel storage, meet added license conditions required after the events of September 11, 2001, and to meet decommissioning and public liability obligations under the Price Anderson Act, must be juxtaposed against the economic conditions in deregulated electricity markets, the availability of capital and insurance. Indeed, over the past 12 months, we have witnessed a near evaporation of fresh capital to many non-utility generating companies, which is a risk factor that must be considered in evaluating financial qualifications for a license renewal. This factor could be potentially overlooked by the NRC's proposed rule in relicensing, which would be utterly irrational.

The NRC's justification for not requiring a financial qualifications review at the time of relicensing is that it can monitor licensees when changes take place in licensee's financial qualifications. These day-to-day or limited annual reviews are not substitutes for a formal, rigorous and disciplined review examining licensee's financial ability to fulfill its obligations for safely and securely operating an aging reactor in a competitive marketplace. Capital and operating costs are increasing due to the impacts of 9/11 and the requirements to prevent terrorist acts against reactors and spent fuel pools. When adopted, the Nuclear Security Act of 2002 (S. 1746) could impose added financial obligations beyond those proposed by NRC to date. NRC's stated rationale for avoiding this review is thin.

Historically, the ratemaking process for a utility corporation had provided reasonable assurance that a license applicant would have funds necessary to operate a reactor. In these circumstances, a licensee could be assured of obtaining all of the reasonable funds it needed to continue operating its aging power plant. However, non-utility generators lack the same assured base of funding, and as utilities diversify into telecommunications, commodity and energy trading operations and high-risk financial activities, the risk grows that there will be insufficient capital resources.

Moreover, it is simply inconceivable that the NRC would reduce disclosure when non-utility generators are forming complex multi-tiered holding company structures designed to prevent the public or regulators, when the circumstances require, from piercing the layers of subsidiaries to reach the parent company's capital resources. LLCs are proliferating, as utilities and non-utilities alike (Entergy, Dominion, etc) seek to establish a one-way flow of profits from the generating subsidiary to the parent corporation, while insulating the parent from potential liabilities they may wish to evade in the event of a business failure. Indeed, a report by Synapse Energy Economics of LLCs¹ has uncovered the fact that the LLC's which are layered between the reactor operating subsidiary and the parent corporation are in some cases foreign corporations

¹ The report, *Financial Insecurity: The Increasing Use of Limited Liability Corporations and Multi-Tiered Holding Companies to Own Nuclear Power Plants*, will be submitted for inclusion in this rulemaking docket after its release to the public.

and in other cases these subsidiaries have no employees and exist only on paper.

Except for a review tied to licensing, there is nothing in the NRC's present regulations that would serve as an acceptable substitute for the opportunity to undertake a disciplined top-to-bottom examination of the cumulative changes to corporate structures and its impact on financial qualifications. License renewal is also the obvious point in time to examine corporate structures as this provides the context of the NRC cumulating a licensee's projected revenues and expenses and the adequacy of its reserves and resources as the agency looks forward from 5-20 years.

To provide a green light for 20 years of operation without a rigorous of a licensee's financial resources and business plans review—equal to that of an initial license application--invites unwelcome surprises. NRC is ill-advised to set itself up to be blind-sided and claim ignorance in the face of nasty surprises. Disclosure and transparency to regulators is essential. Given the lack of transparency in the structures and finances of many publically traded energy companies, some of which control nuclear power plants or decommissioned reactors, NRC seems oddly out of step with the widely agreed upon need for added corporate disclosures. Why NRC would want to look the other way when so many on Wall Street and in government have been undermined by insufficient due diligence to energy (and other) company business practices.

In sum, STAR supports the NRC's proposed rule to require the submission of detailed financial qualifications when utilities reorganize and operate as a "non utility" generator, but STAR vigorously opposes the NRC's proposal to eliminate such disclosures when relicensing reactors. STAR also supports requiring Non Power Reactors to submit financial qualification information in connection with license renewals.

Sincerely,

Scott Cullen
Executive Director

cc: Senator Hillary Rodham Clinton
Senator Charles Schumer
Representative Felix Grucci
Senate Environment and Public Works Committee
House Energy and Commerce Committee