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SENIOR DIRECTOR
BUSINESS POLICY AND
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August 16, 2002

Ms. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTENTION: Rulemakings and Adjudication Staff

SUBJECT: Nuclear Energy Institute's comments on the Nuclear Regulatory Commission's Proposed Rule on *Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor* (67 Fed. Reg. 38427, June 4, 2002).

Dear Ms Vietti-Cook:

These comments are submitted by the Nuclear Energy Institute (NEI)¹ on behalf of the nuclear energy industry in response to the Nuclear Regulatory Commission's (NRC) Notice of Proposed Rulemaking on *Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor*.

The industry commends the Commission for its ongoing efforts to reduce unnecessary regulatory burdens for nuclear power plant licensees. The industry supports the NRC's proposal to remove the requirement that licensees that are not

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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“electric utilities” under the current rule submit financial information in their license renewal applications. However, the industry does not agree with the NRC that a perceived regulatory gap in the financial qualifications regulation—for licensees transitioning from an electric to non-electric entity in a manner that does not require a license transfer—requires the creation of new regulatory authority and new Part 50.76.

Consolidation in the nuclear power industry is continuing and new business structures are evolving. The strong performance of U.S. nuclear plants provides a solid business foundation for licensees, many of them that fall into the category of “non-electric utilities,” to seek renewal of their operating licenses for an additional 20 years. In the increasingly competitive electricity markets, imposition of unnecessary regulatory costs may impact the business decision of whether or not to seek license renewal. It is in the public interest to eliminate unnecessary regulatory burdens in the license renewal process to ensue the long-term energy security provided by nuclear energy.

As the Commission points out in the notice of proposed rulemaking, the NRC has provisions in its existing regulations to evaluate the financial qualifications of a licensee at several points—at initial licensing, before license transfers, and when circumstances warrant through a request for additional information.² The industry agrees with the NRC’s determination that there are no unique financial circumstances associated with license renewal that warrant a separate financial review. Therefore, elimination of a requirement for financial qualification information for licensees within the “non-electric utilities” category is good regulatory policy and would have no impact on public health and safety.

The industry disagrees, however, that there is a regulatory gap that must be closed in order for the Commission to make a generic determination that financial qualifications review is unnecessary at license renewal. The Commission states that there is one exception when it would not be able to appropriately monitor financial qualifications information through means other than the license renewal process. That exception would occur for an “electric utility” that has become a “non-electric utility” without a license transfer.

Industry respectfully disagrees. The Commission has sufficient existing authority to require applicants or licensees to submit relevant financial information on the qualifications of the licensee to manage licensed activities at any time, without creating the new requirements proposed under Part 50.76. As stated under 10 CFR

² The NRC also has the authority to request, at any time, any information that it determines is necessary to ensure adequate protection of public health and safety.

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50.33 (f)(4): "The Commission may request an established entity or newly formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information to be appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility."

In addition, the NRC has concluded in NRC Administrative Letter 96-02, *Licensee Responsibilities Related to Financial Qualifications* that "...licensees have an ongoing obligation to inform, and obtain advance approval from the NRC for any changes that would constitute a transfer of the NRC license, directly or indirectly, through transfer of control of the license...." In addition, "...Licensees should assure that information regarding their financial qualifications and decommissioning funding assurance that may have a significant implication for public health and safety is promptly reported to the NRC."

For these reasons, the industry opposes as unnecessary the proposed new Section 50.76, *Licensee's change of status; financial qualifications*, that would require licensees to submit financial qualifications information 75 days before their status changes from an electric utility to a non-electric entity. The regulatory burden and cost of compiling financial qualification information cannot be justified.

We appreciate the opportunity to comment on the Commission's proposed rule. Please contact me if you have questions about these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Myers". The signature is fluid and cursive, with a large initial "R" and "M".

Richard J. Myers

Senior Director, Business Policy and Programs

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