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August 19, 2002

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20055-001

Attn: Rulemaking and Adjudications Staff

**Re: Financial Information Requirements for Applicants to Renew or
Extend the Term of an Operating License for a Power Reactor**

Dear Secretary:

The Massachusetts Municipal Wholesale Electric Company ("MMWEC"), a public corporation and political subdivision of the Commonwealth of Massachusetts, hereby submits these comments with respect to the Nuclear Regulatory Commission's ("NRC") proposed rule to eliminate the requirement that non-electric-utility power reactor licensees submit financial qualifications information in license renewal applications.

MMWEC is uniquely situated to provide these comments. MMWEC owns 11.596% of Seabrook 1, and 5.888% of Millstone 3. Both of these nuclear power reactors are owned by single asset non-electric-utility power reactor licensees. MMWEC expects that both of these licensees will seek license renewal. Therefore, MMWEC will be substantially and specifically affected by the proposed rule.

For the reasons set forth below, MMWEC opposes that portion of the proposed rule that would eliminate the requirement that non-electric-utility power reactor licensees submit financial qualifications information in license renewal applications.¹

¹ MMWEC does not oppose that portion of the proposed rule that would add a new requirement that licensees of nuclear power reactors who are electric utilities reorganizing as non-electric-utility entities without a license transfer, must notify the NRC and submit financial information on their financial qualifications. This portion of the proposed rule is consistent with MMWEC's comments.

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A. Organization of Non-Electric-Utility Power Reactor Licensees

A power reactor licensee's financial qualifications is essential to that licensee's ability to operate the plant safely and maintain the public health and safety. *67 Fed. Reg. 38427*. The present rule recognizes appropriately the important distinction between the financial qualifications of electric utility licensees and non-electric-utility licensees. Electric utility licensees operate in a business model which is asset-backed and have recourse to the ratemaking process which ensures that the licensee will have sufficient funds to operate the plant safely. However, non-utility-licensees operate in a completely competitive market which is not premised on assets, but on the ability to sell capacity and energy. There is no recourse to ratemaking. Accordingly, the present rule requires non-electric-utility power reactor licensees to submit information on financial qualifications. *Id.*

An electric utility has an obligation to serve the public. That obligation gives rise to the electric utility's ability to ensure sufficient financial resources through the ratemaking process. A non-electric-utility does not have an obligation to serve. Its objective is to make profits. In this regard, the NRC's oversight is far more critical.

The financial qualifications of a non-electric-utility power reactor licensee depend upon the state of the electric and financial markets which markets are subject to significant change over time. For example, currently under the rules of the independent system operator in New England ("ISO-NE"), generating plants, including nuclear power reactors, are dispatched in ascending order of bids submitted to ISO-NE. Under the current rules, plants are permitted to submit bids of zero dollars. Utilizing these rules, nuclear plant operators can bid zero and ensure continuous operation of nuclear power facilities. However, changes in ISO-NE rules will require that all plants submit non-zero bids. This change will affect the financial qualifications of non-electric-utility power reactor licensees in New England because those qualifications depend in part on the electric market.

The corporate structure of electric utilities and non-electric utilities reveal important financial distinctions and motives. Electric utilities own assets and undertake liabilities. Non-electric-utility power reactor licensees are often organized as single asset limited liability companies. The structure is designed to limit liability to the owners in the event of financial failure. In choosing this form of organization, these owners recognize that their financial health are subject to substantial change. Because financial well-being is essential, in the case of non-electric utility power reactor licensees, this structure also signals a significant risk to the health and safety of the public.

B. Limited Information Available in Trade Press

The NRC recognizes the risks inherent in the operation of a nuclear power reactor by a non-utility entity, and in particular, the effect that changes in the electric and financial markets can have on the financial qualifications of a non-utility entity to operate a nuclear power reactor safely. In this regard, "the NRC staff informally monitors the financial trade press for information on its licensees' financial situations." *67 Fed. Reg. 38428*.

As a minority owner of both Seabrook 1 and Millstone 3, MMWEC submits that such informal monitoring alone is insufficient to ensure that non-electric-utility power reactor licensees have sufficient financial qualifications to operate a power reactor safely. Since non-electric-utility power reactor licensees operate in a competitive environment, it is generally not in their best interest to disclose financial and other information. Even as a minority owner, MMWEC finds it difficult to monitor the financial qualifications of the operators of the plants in which it holds a joint ownership interest.

Single asset, non-electric-utility power reactor licensees are generally organized as part of a complex holding company system. While the trade press may provide some information with respect to the holding company on a consolidated basis, the trade press does not possess or report financial data for the single asset non-electric-utility power reactor licensee. In such a case, the only information available on the stand alone entity is contained in the holding company's annual filings with the Securities and Exchange Committee ("SEC"). In the case of a regulated holding company, SEC Form U5S provides financial information about the single asset entity. For exempt holding companies, Form U3A2, provides similar information. Even then, these reports do not disclose off-balance sheets transactions such as those which proved so troublesome to the true financial health of Enron.

Moreover, companies affiliated with a non-electric-utility power reactor licensee in a holding company system frequently engage in trading and other activities which may place significant stress on the financial qualifications of the holding company system. The unregulated activities place at risk the ability of a non-electric-utility power reactor licensee to operate a nuclear plant safely.

C. The Need for a Formal Process

For these reasons, MMWEC urges the NRC to maintain the requirement that non-electric-utility power reactor licensees submit financial information in conjunction with license renewal applications. With respect to non-reactor financial reviews, the NRC states that the proposed rule will continue to require non-power reactor licensees to submit financial qualifications when they apply to renew their licenses every 20 years. *67 Fed. Reg. 38429*. Significantly, the NRC states that in some cases "the NRC has

found financial weaknesses or other ambiguities during the [non-power reactor] license renewals that it would not have discovered otherwise.” *Id.* With respect to non-power reactor licensee, the NRC concludes that the burden on those licensees “to demonstrate their financial qualifications every 20 years is offset by the assurance that licensee management is committed to continued operation.” *Id.*

This same rationale obtains to non-electric-utility power reactor licensees. A formal review process at the time of license renewal may disclose financial weaknesses that would not otherwise be discovered because of the unavailability of accessible information regarding the financial qualifications of the single asset entity engaged in nuclear power operation.

D. Burden of Present Rule Minimal

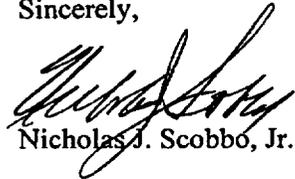
Finally, the NRC’s regulatory analysis of the proposed rule demonstrates that the regulating burden of the existing rule is minimal. The regulatory analysis estimates that there will be a total of nine (9) license renewal applications by non-electric-utilities. *Regulatory Analysis at 16.* With respect to each of these applications, the regulatory analysis estimates that the cost for the licensee to prepare the information will be \$8,000 and the cost for NRC staff to review it will be \$16,000. *Id. at 15, 18.* The cost to the industry and the NRC to continue review of financial qualifications with licensee renewal applications, totals only \$24,000 per applicant. Moreover, according to the regulatory analysis, the net present value savings of the proposed rule for all anticipated renewals nationwide is only \$178,700, including both industry and NRC savings. *Id. at 19.* MMWEC submits that this is a small price to pay to ensure that non-electric-utility power reactor licensees have sufficient financial resources to operate power reactors, and to protect the public health and safety.

Additionally, the regulatory analysis disregards completely the value to the public health and safety of reviewing a non-electric-utility power reactor licensees’ financial qualifications at the time of license renewal. The analysis simply concludes that the proposed rule will save money and reduce regulatory burden. Despite the importance of financial qualifications, the analysis simply assumes that such review is unnecessary. For the reasons stated above, a formal review of a non-electric-utility power reactor licensees’ financial qualifications at time of license renewal is both valuable and essential.

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For the foregoing reasons, MMWEC urges the NRC to reconsider and to not adopt that portion of its proposed rule which would remove the requirement that non-electric power reactor licensees submit financial qualifications information with their license renewal applications.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas J. Scobbo, Jr.", written in a cursive style.

Nicholas J. Scobbo, Jr.

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