

**AFFIRMATION ITEM**

**RESPONSE SHEET**

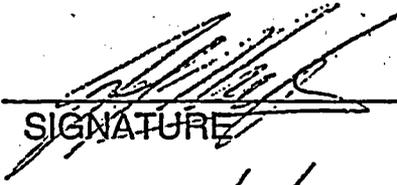
TO: Annette Vietti-Cook, Secretary  
FROM: Commissioner Merrifield  
SUBJECT: **SECY-03-0195 - FINAL RULE, 10 CFR PART 50,  
"FINANCIAL INFORMATION REQUIREMENTS FOR  
APPLICATIONS TO RENEW OR EXTEND THE TERM  
OF AN OPERATING LICENSE FOR A POWER  
REACTOR"**

Approved  Disapproved  Abstain

Not Participating

**COMMENTS:**

Approved subject to attached edits.

  
\_\_\_\_\_  
SIGNATURE

12/16/03  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

B17

Comments of Commissioner Merrifield on SECY-03-0195

I approve the Final Rule subject to the following comments on the Federal Register Notice:

1. Comment 5 raises the issue of whether NRC has validated financial information adequately based on a GAO report concerning the Commonwealth Edison and PECO merger. While the reference to the NRC's response to the GAO is sufficient to cover the details of the specific issues in the GAO report, it is not intuitive why the comment itself is not relevant to the rulemaking as stated in the response. Staff should provide a slightly expanded explanation of why it is believed the comment is not relevant to this rulemaking.
2. The last paragraph in the response to Comment 9 should be revised. As written, the relevance of the second sentence, which discusses the ability to shut a plant down, is not clear. The last sentence may not be entirely accurate because the LLC organization might be of interest to the NRC if it was occurring simultaneous with the event triggering NRC review. We look at the LLC status at transfers. The following is a revised text for that paragraph:

~~The NRC does not agree with identified a basis for the commenter's view that the use of the LLC structure indicates licensees anticipate substantial changes in financial health and signals significant risk to the health and safety of the public. In any event, The Commission retains the same enforcement and inspection authority regardless of the corporate structure and can ultimately shut the reactors down if they are not operated safely, regardless of whether the licensee owner or operator is organized as an LLC or has another organizational structure. Furthermore, the use of LLC's by licensees is not relevant to the point in time that NRC reviews the financial qualifications of non-electric utilities, which include corporate forms other than LLCs.~~

3. Edit the second sentence in response to Comment 10 (adding the bolded language) so it reads in its entirety:  
  
"In this regard, the NRC has a full regulatory regime for licensing non-electric utilities that requires substantial financial information be submitted and reviewed, which is not the case for licensing reviews for electric utilities."
4. Add to the last sentence of the response to Comment 16 the bolder language so it reads in its entirety:  
  
"Public health and safety are primarily protected through the NRC onsite inspection program, and the financial health of a licensee through NRC's monitoring of publically available financial information."



12/16/03