

Title:

Interim Staff Guidance - Reviewing and Assessing the Financial Condition of Operating Power Reactor Licensees, Including Requests for Additional Information (OL/FR-ISG-2014-01)

I. Purpose:

The purpose of this interim staff guidance (ISG) is to clarify the process by which the U.S. Nuclear Regulatory Commission (NRC) staff will review financial conditions of, and financial concerns about, currently operating power reactor licensees. The NRC's financial reviews primarily consider merchant plants, as utilities are able to recover costs and are exempted from financial qualification reviews under § 50.33(f) of Title 10 of the Code of Federal Regulations (10 CFR). This guidance is intended to provide consistency and transparency with regard to the NRC's financial review process for licensees in the absence of a license transfer or other active licensing action. It also addresses the NRC's basis for financial Requests for Additional Information (RAIs) from licensees, the NRC's evaluation of RAI responses, and the closure of such inquiries.

This ISG is intended to supplement NRC financial review guidance presented in NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," Section III(1)(d) – Post-OL Non-transfer Reviews (January 1999). The current guidance in NUREG-1577 lacks sufficient detail. Additional clarifying information regarding the process and criteria by which the NRC reviews the finances of licensees after it has issued a Part 50 operating license or a Part 52 combined license, is required.

Commission history and precedent has shown an ongoing concern for potential degraded safety in the face of degraded financial qualifications; this history also consistently indicates the Commission's belief that any nexus between safety and the NRC's review of financial qualifications is indirect and of secondary importance in ensuring public health and safety. The NRC's primary tool for evaluating and ensuring safe operations at nuclear power reactors is through its inspection and enforcement programs. Financial information requested by the NRC staff and its evaluation of that information will be provided to NRC's regional management to enhance situational awareness and, if appropriate, for use in the planning of NRC inspection activities.

II. Background and Scope:

Per 10 CFR 50.33(f)(5), the NRC may request that a currently operating power reactor licensee (licensee) provide information regarding its "financial arrangements and status of funds." Specifically,

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 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.

The NRC's authority to require financial qualifications of, and to request financial information from, an applicant or a licensee regarding financial resources and conditions, is derived from Section 182a. of the Atomic Energy Act of 1954, as amended (AEA). The AEA states that an applicant for a license must provide "information that the Commission, by rule or regulation, may determine to be necessary to decide technical and financial qualifications of the applicant as the Commission may deem appropriate for the license." The AEA grants broad discretion to the Commission to determine what financial information it deems appropriate.

In 2004, the NRC published the final rule entitled "Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor," (69 FR 4439, January 30, 2004). The rule, which implemented changes to 10 CFR 50.33(f), removed financial qualification requirements for merchant plants applying for license renewal. The NRC's authority to conduct periodic financial reviews outside the scope of an active licensing action was the basis for removing financial qualification reviews for merchant plants seeking license renewal. (Twenty years earlier, in 1984, the NRC removed financial qualification requirements for electric utilities per amendment of 10 CFR 50.33 (49 FR 35747, September 12, 1984)).

In the 2004 statement of considerations accompanying the final rule, the Commission stated that:

...NRC believes that its primary tool for evaluating and ensuring safe operations at nuclear power reactors is through its inspection and enforcement programs....

Between major triggering events (i.e., original application, transfers, and transition from utility to merchant), the NRC relies upon periodic monitoring of the financial health of licensees to detect whether additional regulatory scrutiny and action are necessary to assure public health and safety... (69 FR 4439, 4440 (Jan. 30, 2004))

Consistent with the NRC staff guidance in NUREG-1577, the NRC does not systematically conduct ongoing reviews of financial qualifications or financial conditions of licensees. However, the NRC staff does conduct ongoing reviews of all licensees by screening trade papers, industry newsletters, and various public sources for business, finance, and economic news to determine whether to issue RAIs to the licensee, and to consider the NRC staff's analysis of the licensee's response, if appropriate, in the planning of inspection activities.

The NRC does not regulate or provide oversight of commerce, and does not review commercial activities and decisions of its licensees unless such actions may impact safety. However, the NRC does employ a process of monitoring licensees throughout the terms of their licenses for any indications that they may not have sufficient financial resources to operate their plants safely. Information gathered in this process is used to provide NRC regional management with situational awareness in performing inspections and evaluating inspection findings, and to inform discussions between NRC management and licensees.

III. Discussion and Need for Interim Staff Guidance:

In 2012 and 2013, two NRC power reactor licensees reported in official U.S. Securities and Exchange Commission (SEC) filings, balance sheet impairments, potential debt service risk, and risk to operational results from declining trends in electricity prices. One such filing stated:

“We may not be able to repay or refinance our debt as or before it becomes due..., or we may only be able to refinance such amounts on terms that will increase our cost of borrowing or on terms that may be more onerous. Our ability to successfully implement any future refinancing of our debt will depend on, among other things, our financial condition and operating performance, which is subject to prevailing economic and competitive conditions, and to certain financial, business and other factors beyond our control, including, without limitation, wholesale electricity prices... Because our credit ratings are significantly below investment grade, we may be more heavily exposed to these refinancing risks than other borrowers...”

NRC reviewed these filings through its ongoing monitoring of publicly available financial information. NRC’s financial analysts concluded that the SEC filings conveyed indications of potentially significant declines in the licensees’ financial conditions. As a result, the NRC requested additional financial information from these licensees to ensure the availability of adequate financial resources to operate their facilities safely. (NRC’s Agencywide Documents Access and Management System (ADAMS) accession numbers ML13077A206 and ML13087A531).

Following the issuance of these RAIs and informed by subsequent discussions among NRC staff, NRC concluded there was need for additional staff guidance for initiating and managing the financial condition review process during the life of a license in the absence of a licensing action. Such guidance was necessary to clarify:

- The scope of NRC preliminary reviews and analysis of publicly available financial information;
- The objectives of NRC’s requests for additional financial information;
- The NRC’s approach to analyzing financial information received; and
- Final actions, disposition, and subsequent NRC communication following requests for information and NRC’s analysis.

This ISG provides enhanced detail with regard to the staff’s:

- Identification of initial financial issues of concern, information sources used to identify potential issues, and early confirmation by the NRC of the accuracy of information;
- Analysis of initial financial news and information;
- Internal agency dialogue and direction setting with regard to initial financial information, including peer review and management input;
- Consideration of financial criteria;
- Process for RAI development;
- Evaluation of licensee responses;
- Closure/disposition of issue and NRC communication following closure.

Appendix A to this ISG provides a flowchart summarizing the licensee financial condition review and assessment process described below.

IV. Interim Staff Guidance:

A. Level of Review – Identifying Initial Issue(s) of Concern and Confirming Accuracy of Preliminary Sources of Information

- Preliminary financial information to be reviewed will include trade papers, industry newsletters, and various public sources for business, finance, and economic news, as well as routine submittals by the licensee to the NRC. Such information often provides the public, industry, the financial community, and the NRC with insightful information about current trends having economic and financial impacts on licensees.
- A preliminary assessment of the possible impacts to licensee finances will be made upon discovery of an issue that could significantly impact a licensee's financial condition. Such impacts, or material adverse effects, could signal the possibility that a company's operations and/or financial condition may be seriously compromised. The considerations should include the concern for, or likelihood of, significant impacts on plant revenues, the licensee's source(s) of operating funds, or financially material facility expenses not previously planned for by the licensee.
- Financial review staff, through their project manager (PM) counterparts in the Division of Operating Reactor Licensing (DORL) and the cognizant regional inspection branch staff within the region's Division of Reactor Projects, may inquire informally (e.g., via phone calls to licensees) to seek clarification and to verify the accuracy of any adverse information brought to the attention of staff. These communications with the licensee must be documented in ADAMS.

B. Criteria to determine whether RAIs should be issued per 10 CFR 50.33(f)(5) – Analysis of Preliminary Source Information

The criteria for generating RAIs reflect potentially significant adverse financial conditions of a licensee that may impact how the licensee assures availability of funds to fund licensed activities and, in particular, safety-related activities. These criteria include –

- Potentially significant, and/or long-term/chronic impacts to revenue generation;
- Potentially significant, and/or long-term/chronic impacts to sources of funds/capital;
- Significant, unforeseen expenses requiring imminent capitalization.

Significant impacts and expenses, as stated above, will reflect the potential for material impacts to the licensee's financial condition and financial statements. No numerical thresholds are defined in this guidance. However, impacts such as those resulting from significant reductions in revenues generated by newly negotiated power purchase agreements, risks to critical lines or other sources of credit, or other such conditions, should be considered as significant.

Along with preliminary information as identified, the NRC should consider recent historic information about the licensee's financial condition in informing its decision to request additional financial information from the licensee.

C. Staff Peer Review and Management Review

In reaching consensus as to whether or not seeking further financial information from the licensee is warranted, the lead staff analyst (analyst) will engage with other staff with financial expertise in a collaborative peer review of the analyst's concerns, conclusions and proposed actions. Further vetting will occur through the NRC Branch Chief responsible for the Office of Nuclear Reactor Regulation's financial analysis staff (currently the Financial Analysis and International Projects Branch) and the cognizant regional office.

D. Information to be Requested by Staff

The staff should request pro-forma financial statements and evaluate the following in the context of any potential impact on safety-related activities:

- Net income forecasts and net cash flow provided for/used in operating activities;
- Retained earnings forecasts;
- Sources of financing, and the status of such sources, such as lines of credit, parental guarantees, etc.;
- Impacts on safety, if any, that such financial information or financial conditions have had or may have on plant operations.

The staff will coordinate the review of draft RAIs with the NRC's Office of the General Counsel (OGC) to ensure requests reflect adequate legal authority. The staff will also coordinate communication to licensees through the appropriate NRC regional staff and DORL PM.

E. Staff Analysis - Criteria for Evaluating Information Provided by Licensees

Staff analysis of the information provided by licensees should focus on the following criteria:

- Availability of funds both in the short term and over intermediate time horizons (five years), to cover expenses associated with licensed activities, with a particular focus on safety-related activities;
- Identification of source(s) of funds (retained earnings, other assets as derived from revenue and income generation, guarantees, etc.);
- Licensee assumptions and expectations regarding significant changes in future revenue, net income, and retained earnings derived from plant operations; previously unanticipated expenses of a material nature; and changes in other sources of funding. Staff will focus its analysis on the ability of the licensee to operate safely and to continue to conduct the activities authorized by the license.

F. Closeout and Disposition Following Staff Analysis of Licensee Response to RAIs

The staff will document its analysis in a memorandum to the cognizant regional Branch Chief and will send a close out letter to the licensee through the DORL PM.

Based on the financial condition of the licensee, the availability of funds to cover licensed activities, and in particular, safety related activities, may be impacted. This assessment and supporting information is provided to the NRC regional management to enhance situational awareness and, if appropriate, to be used in the planning of NRC inspection activities.

Interim Staff Guidance – Appendix A

Flowchart – Review and Assessment of Financial Condition of Operating Power Reactor Licensees*

