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Mr. Richard Turtill
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20555-0001

Subject: Comments of the Nuclear Energy Institute on Interim Staff Guidance, OL/FR-ISG-2014-01, "Reviewing and Assessing the Financial Condition of Operating Power Reactor Licensees, Including Requests for Additional Information" (Feb. 17, 2015) (Docket NRC-2015-0045)

Dear Mr. Turtill:

On March 4, 2015, the NRC published a notice of issuance of Interim Staff Guidance, OL/FR-ISG-2014-01, "Reviewing and Assessing the Financial Condition of Operating Power Reactor Licensees, Including Requests for Additional Information" (ISG) (80 Fed. Reg. 11,691). The NRC did not offer the public an opportunity to comment on the interim staff guidance (ISG) before it was issued. However, given industry interest in the ISG and in the subject of NRC financial qualification (FQ) requirements in general, the Nuclear Energy Institute, Inc. (NEI)¹ submits the following comments on the ISG on behalf of the nuclear energy industry.

The NRC describes the intent of the ISG as follows:

The purpose of this ISG is to clarify the process by which the NRC will review financial conditions of, and financial concerns about, currently operating power reactor licensees. 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 similar licensing action). It addresses the NRC's basis for financial Requests for Additional Information from licensees during operations, the NRC staff's evaluation of Requests for Additional Information responses, and the closure of such inquiries. (80 Fed. Reg. 11,691).

The ISG is intended to enhance NRC financial review guidance in NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," Sec. III(1)(d) (Post-OL Non-transfer Reviews) (2001), and will be included in the next update of NUREG-1577. The NRC states (ISG, p. 1) that the existing guidance lacks sufficient detail. In discussing the bases for the NRC staff's conclusion that issuance of the ISG does not constitute a

¹ NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the 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, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

backfit, the NRC staff states that the agency “does not intend to impose or apply the positions described in the ISG to existing (already issued) licenses (*e.g.*, operating licenses and combined licenses),” either now or in the future, absent a voluntary request for change from the licensee such as a license transfer or other active licensing action. *See* ISG, p. 1; 80 Fed. Reg. 11,691.

The ISG describes a new NRC process for review and assessment of financial information during operation of a nuclear power plant. (NRC financial reviews primarily consider merchant plants, as utilities are able to recover costs and are exempted from FQ reviews under 10 CFR 50.33(f).) As discussed below, the ISG appears inconsistent with other recent Commission and NRC staff assessments concluding that there is no demonstrated correlation between a reactor licensee’s financial condition and its safety performance, and that nuclear facility safety is primarily assured through the NRC’s inspection and enforcement process—not reviews of financial information. For that reason, the ISG is deficient in failing to reflect current Commission policy. Moreover, as a practical matter the ISG is likely to impose unnecessary burdens upon both the NRC and the industry. We therefore request that the staff either withdraw the ISG or modify it to require some potential connection between funding and poor safety performance prior to initiating a resource-intensive collection and assessment of financial information. If the staff opts to develop revised guidance, the updated version should be issued for public comment before being put into effect.

The ISG Does Not Adequately Account for the NRC’s Rigorous Inspection and Enforcement Processes as a Means of Assuring Facility Safety

In explaining the purpose of the ISG, the NRC staff states:

Commission history and precedent has shown an ongoing concern for potential degraded safety in the face of degraded financial conditions; 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. (ISG, p. 1).

The staff’s recognition that the Commission has consistently found no direct nexus between facility safety and NRC’s reviews of financial qualifications appears at odds with the ISG, which establishes an ambitious framework of activities to detect potential financial deficiencies. For example, the ISG provides (p. 2) that the NRC does not systematically review financial qualifications or financial conditions of licensees, but goes on to state that the NRC staff conducts “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 requests for additional information (RAIs) to the licensee, and consider that licensee’s response in planning inspection activities. *Id.* Further, the ISG does not contain objective criteria for determining whether to seek additional financial information. Rather, it simply states (p. 2) that “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.” The reader might infer that the NRC staff first checks licensee finances and then searches for potential safety impacts.

In Section III (“Need for the ISG”), the NRC discusses reviews by NRC financial analysts of financial information, including reports submitted by licensees to the U.S. Securities and Exchange Commission (SEC). The ISG broadly states that the purpose of such reviews is to find indications that licensees “may not have sufficient financial resources to operate their plants safely.” The ISG also provides for RAIs to licensees based upon such reviews. In Section IV, the guidance allows the NRC staff extremely broad discretion to evaluate financial information as “possibly impacting a licensee’s financial condition,” as well as issue RAIs, inform NRC regional officials, and conduct inspections. Possible delays in licensing activities or NRC licensing approvals that may well be triggered by such NRC FQ reviews are not discussed.

Additionally, the ISG does not address other NRC statements and conclusions regarding the lack of correlation between the financial condition of a licensee and plant safety:

- In a June 2015 document, the NRC staff states:

“For operations, one would expect to see regulated utilities, which are not subject to the same type of financial pressures as non-regulated utilities, operating more safely. Our experience to date has demonstrated this is not true. A recent academic paper on ‘Corporate Incentives and Nuclear Safety’ confirmed this finding, showing that there is no indication that non-regulated utilities are operating any less safely than those regulated utilities with guaranteed rate recovery.”²

- In 2014, former NRC Chairman Macfarlane told Congress: “The NRC has not found a consistent correlation between licensees’ poor financial health and poor safety performance.”³
- In a 2013 SECY, the NRC staff stated: “There is no evidence to support the idea that nuclear plant operators choose not to spend money on safety measures because they are short on funds.”⁴

As a result, the NRC has concluded that:

*The NRC’s Reactor Oversight Process (ROP) and Construction Reactor Oversight Process (cROP) are the agency’s primary tool for identifying safety issues. As such, safety issues at power reactors, whether originating from financial hardship or not, are identified through the ROP and cROP. (emphasis added).*⁵

² NRC Draft Regulatory Basis Document for Financial Qualifications for Reactor Licensing Rulemaking (June 2015), p. 10 (reference omitted).

³ Letter dated March 24, 2014, from NRC Chairman Macfarlane to Senator Markey (Macfarlane Letter), Encl. p. 1, citing NRC’s 1997 policy statement on the restructuring and economic deregulation of the electric utility industry.

⁴ SECY-13-0124, *Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualification Qualifications* (Nov. 22, 2013), p. 16.

⁵ Macfarlane Letter, Encl. p. 1. Similar statements are contained in the 2015 NRC Draft Regulatory Basis Document for Financial Qualifications for Reactor Licensing Rulemaking, pp. 10 and 13, as well as in SECY-13-0124, p. 9.

The ISG does not account for these recent agency conclusions. In particular, the ISG appears inconsistent with key sections of the recent Draft Regulatory Basis document issued to support the proposed FQ rulemaking.

The Review and Assessment Process in the ISG Is Flawed

Section IV and Appendix A of the ISG describe the NRC's planned process for review and assessment of financial information, which includes reviewing public sources of financial information to identify the potential for significant impact on a licensee's financial condition, issuing RAIs to a licensee relating to its financial condition, and staff analysis of the licensee's response to determine whether the licensee has sufficient funds to cover its costs. The ISG states that the RAIs should request pro-forma financial statements, including:

- 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, *e.g.*, lines of credit and parental guarantees;
- Impacts on safety, if any, that such financial information or financial conditions have had or may have on plant operations.

(See ISG, p. 5.) Based upon the RAI responses, the NRC staff would then determine the availability of funds both in the short-term and over intermediate time horizons (five years), to cover expenses associated with licensed activities.

The review process described in the ISG does not appear to reflect current Commission and NRC staff positions (discussed above) that there is no demonstrated correlation between licensees' poor financial health and poor safety performance, and that there is no evidence to support the idea that nuclear plant operators choose not to spend money on safety measures because they are short on funds. Furthermore, the ISG ignores the fact that the NRC's inspection and enforcement process and the ROP are, and should be, the agency's primary tools for identifying safety issues, as noted above.

For example, if the NRC were to find a licensee in financial distress, raising concerns that the licensee may not have sufficient funds to cover expenses, the ISG provides no guidance for any follow-up NRC action other than alerting "NRC regional management to enhance situational awareness and, if appropriate, to be used in the planning of NRC inspection activities." If the licensee does in fact have safety performance issues, the financial issues would at most be a contributing cause (or possibly not a cause at all). Furthermore, if the licensee has safety performance issues, the NRC should take action based upon the ROP and NRC's inspection and enforcement procedures, not because an NRC financial analyst has identified a financial issue.

Thus, the process described in the ISG appears backwards. A more effective and appropriate approach would be to identify any safety performance issues through the inspection and enforcement process. If there is evidence that financial issues are contributing to safety performance issues, NRC financial analysts could then review and assess financial information. There does not appear to be any practical value in NRC review and assessment of financial information in a vacuum for the purpose of trying to find safety performance issues.

In summary, the ISG would have both the NRC and the licensee expend substantial time and resources in collection and evaluation of financial data, without any indication that the licensee's financial

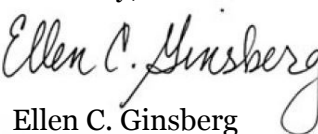
condition has adversely affected its safety performance. This regulatory approach is flawed, and the ISG should therefore be revised.

A case in point involves the Comanche Peak nuclear plant, which is cited as a basis for the ISG. (ISG, pp. 2-3). In 2013 the NRC issued an RAI to Comanche Peak in response to a filing with the SEC by the licensee's parent, which stated that the company might not be able to repay or refinance its debt (it subsequently declared bankruptcy). The RAI sought information on the licensee's ability to meet the NRC's financial qualifications requirements. The NRC issued the RAI despite the fact that the NRC had not issued an escalated enforcement action or Greater-than-Green finding to Comanche Peak in the previous five years (and has not done so in the two years following this issuance of the RAI, except for a security-related Greater-than-Green finding dated April 28, 2015). Absent any indication of poor safety performance by Comanche Peak, we believe that the RAI led to the unnecessary expenditure of resources by the NRC and the licensee. In fact, as discussed in its letter dated January 28, 2014, the NRC took no action based upon the RAI response by Comanche Peak.

Recommended Actions

We request that the NRC either withdraw the ISG or amend the ISG to correct the deficiencies discussed above. Before the NRC issues an RAI, the NRC technical staff should first review information regarding the licensee's safety performance, including ROP data and the licensee's inspection and enforcement history. If the technical staff determines that the licensee's safety performance has been good,⁶ the NRC's financial analysts should stop the ISG process and should not issue an RAI. Conversely, if the licensee's safety performance has not been good, then the NRC technical staff should determine whether the poor performance might be due to lack of sufficient funds. If the technical staff determines that the poor performance is unrelated to funding, then the NRC's financial analysts should terminate the ISG process. NRC should impose an RAI only if it determines that (i) a licensee's safety performance has been poor, and that (ii) the poor performance might be due to lack of sufficient funds. Please feel free to contact me or Anne Cottingham (awc@nei.org) if there are any questions concerning these NEI comments.

Sincerely,



Ellen C. Ginsberg

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cc: NRC Chairman Stephen G. Burns
Commissioner Kristine L. Svinicki
Commissioner William C. Ostendorff
Commissioner Jeff Baran
William Dean, Director of Office of Nuclear Reactor Regulation
Margaret M. Doane, Esq., General Counsel

⁶ Good performance would, for example, consist of no Greater-than-Green findings and performance indicators under the ROP, and no escalated enforcement action. It might also consist of an isolated White finding or low-level enforcement action.