

March 21, 2014

The Honorable Edward J. Markey  
United States Senate  
Washington, DC 20510

Dear Senator Markey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letters of November 14, 2013, and January 24, 2014. Responses to your questions and request for Commission views are enclosed. Staff from our Office of Congressional Affairs will continue to work with your staff regarding the documents that you requested.

If you need anything additional, please contact me or V. Renee Simpson, Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

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Allison M. Macfarlane

Enclosure:  
[As stated](#)

**Identical letter sent to:**

The Honorable Edward J. Markey  
United States Senate  
Washington, DC 20510

The Honorable Bernard Sanders  
United States Senate  
Washington, DC 20510

**Responses to Requests for Information  
Senators Edward J. Markey and Bernard Sanders  
Letter Dated January 24, 2014**

**QUESTION 4.**

**Does the Commission currently believe that “any nexus between safety and the NRC’s review of financial qualifications is indirect and of secondary importance to ensuring public health and safety?” If so, on what analysis does the Commission base this view (and please provide us with copies of any such materials)?**

**ANSWER.**

As you are aware, the Commission is currently considering the policy issues associated with financial qualification requirements for non-electric utility applicants in SECY-13-0124, “Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications.”

To date, based on its decades-long history regulating nuclear power plant licensees, the NRC has found no direct link between safe operations and financial qualifications. The Commission has historically asserted that any such nexus is indirect and of secondary importance. 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. The Commission’s policy on this issue is contained in several historical policy papers and statements discussed below and attached for your reference.

In 1984, in the supplementary information provided with the NRC final rule, “Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants” (Attachment 1), the Commission stated that, “[a] financial disability is not a safety hazard per se because the licensee can, and under the Commission’s regulations would be obliged to, simply cease operations if necessary funds to operate safely were not available.”

In the supplementary information provided with the NRC’s 1997 policy statement on the restructuring and economic deregulation of the electric utility industry (Attachment 2), the Commission stated that, “... the NRC continues to believe that its primary tool for evaluating and ensuring safe operations at its licensed facilities is through its inspection and enforcement programs. In its ... experience, the NRC has found that there is only an indirect relationship between financial qualifications and operational safety.... Although enhanced financial qualification reviews may provide the NRC with valuable additional insights on a licensee’s general qualifications to operate its facilities safely, it is not clear that enhanced financial qualifications programs by themselves would prove to be a sufficient indicator of general ability to operate a facility safely.” In the policy statement itself, the Commission states that it, “... has not found a consistent relationship between a licensee’s financial health and general indicators of safety....”

And in 2004, in the resolution of public comments on the final rule, “Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor” (Attachment 3), the Commission stated, “[t]he NRC has not found a consistent correlation between licensees’ poor financial health and poor safety performance. If a licensee

ENCLOSURE

postpones inspections and repairs that are subject to NRC oversight, the NRC has the authority to shut down the reactor or take other appropriate action if there is a safety issue.”

**QUESTION 5.**

**Although the November 22, 2013, paper is stated to apply only to new merchant nuclear reactor licenses, Rulemaking Options A and B presented to the NRC in the November 22, 2013, paper remove financial qualifications from the reactor licensing basis. If the Commission proceeded with either of these options, does the Commission agree with the non-concurring NRC personnel that the NRC staff “would no longer have a regulatory basis to maintain existing financial support agreements implemented by license conditions for licensees?” If not, on what legal basis does the Commission disagree with the non-concurring NRC personnel?**

**ANSWER.**

If the Commission decides to initiate a rulemaking effort to amend or rescind the 10 CFR Part 50 financial qualifications demonstration requirements for initial licenses, the implications on currently operating plants would be fully evaluated. With regard to existing license conditions, a license condition is part of a license and remains so until an action is taken to remove the condition. It is not necessary for the NRC staff to “maintain” a license condition for it to continue to be part of a license. To the extent that any licensee wishes to change any license condition, that licensee must seek an amendment to its license pursuant to 10 CFR 50.90.

**QUESTION 5.**

**(Originally included in a letter dated November 14, 2013) Please indicate, as a general matter, whether the Commission believes that its staff should be empowered and enabled to enforce NRC regulations in a uniform manner for all NRC licensees.**

**ANSWER.**

The staff, using policies and management processes to ensure consistent decision making, enforces NRC regulations for all licensees consistent with the NRC enforcement policy.