

United States Senate

WASHINGTON, D.C. 20510

November 14, 2013

The Honorable Allison Macfarlane
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Macfarlane:

We write to express our grave concerns regarding the potential that NRC staff were improperly directed to cease their regulatory scrutiny of whether there exist sufficient funds to operate Entergy's merchant nuclear fleet (which consists of the Pilgrim Nuclear Power Station in MA., Vermont Yankee in VT, Indian Point Energy Center and the James A. Fitzpatrick Nuclear Power Plant in NY, and the Palisades Power Plant in MI) after Entergy officials contacted senior NRC officials to complain about pending NRC oversight. We have also learned that these same NRC staff have additionally been directed to refrain from attempting to determine whether other nuclear reactor licensees are maintaining sufficient operating funds for all licensees that have been found to have degraded safety measures and thus subject to additional NRC safety oversight.

According to 10 CFR 50.33,¹ licensees must provide reasonable assurance of sufficient funding to cover the costs of operations for the period of the license, including the costs associated with the personnel and equipment needed to operate the reactor safely. On March 20, 2013, the NRC issued a Request for Additional Information² (RAI) to Entergy regarding the sufficiency of funds needed to continue to operate its license following an NRC review of Entergy's SEC filings that indicated that Vermont Yankee's financial condition had deteriorated due to uncertainty related to its ability to continue to operate³. According to information provided to Senator Markey's office, Entergy's response to this request raised NRC concerns that led the staff to draft up similar RAIs for the rest of Entergy's merchant nuclear fleet. These RAIs were approved and sent to Entergy as drafts on June 5, 2013 and would typically, under normal NRC processes, have been published the following day. However, upon receipt of the requests, Entergy contacted NRC personnel in the office of Nuclear Reactor Regulation. The following week, senior Entergy officials met with senior NRC managers to discuss financial issues. The RAIs were never published.

¹ <http://www.nrc.gov/reading-rm/doc-collections/cfr/part050/part050-0033.html>

² <http://pbadupws.nrc.gov/docs/ML1307/ML13077A206.pdf>

³ In August 2013, Entergy announced that it would move to decommission Vermont Yankee.

Not only was the NRC technical staff prevented from ever issuing the RAIs they felt were needed to determine whether other Entergy merchant reactors had sufficient funds with which to operate under the terms of their licenses, the NRC staff were additionally directed to refrain from issuing financial RAIs to *any* licensee that is currently subjected to additional safety oversight because of safety problems experienced at the reactors.⁴

Such directives would appear to be antithetical to NRC's mission to assure public health and safety. In our opinion, financial distress and the failure to maintain sufficient operating funds would be expected to signal the potential for future degradations in safety brought about by a licensee's need to conserve funding. Unplanned safety-related shut-downs -- such as those experienced at Pilgrim and Palisades -- would also result in lower revenues, and could contribute to a licensee's inability to maintain sufficient operating funds. If anything, licensees that are experiencing more safety problems than others should be subjected to *more* financial scrutiny, not exempted from any such scrutiny whatsoever.

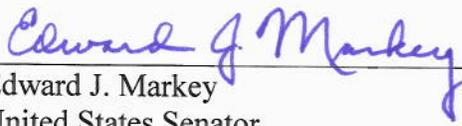
So that we can understand the basis for the specific directive to prohibit NRC staff from requesting financial information from Entergy or any other licensee whose reactors are experiencing degraded safety indicators, we ask that you provide us with the following documents and materials:

1. Please provide us with a copy of each of the RAIs that were prepared and approved for submittal to Entergy for its merchant reactors on June 5, 2013.
2. Please provide us with all documents (including emails, correspondence, meeting notes, telephone logs, calendar entries or other materials) related to the NRC decision not to issue and publish those RAIs to Entergy's merchant reactors.
3. For the past year, please indicate a) all dates on which Entergy personnel met with or spoke by telephone to any NRC personnel (including NRC staff, Commissioners and Commissioners' staff) on matters that are in any way related to compliance with or NRC efforts to assure compliance with 10 CFR 50.33, b) the titles of both the Entergy and NRC personnel with whom each such meeting or telephone call took place, c) any written communications provided by Entergy to the NRC during such meeting or telephone call.
4. Please provide us with all documents (including emails, correspondence, meeting notes, telephone logs, calendar entries or other materials) related to any NRC direction to its staff not to send any financial RAIs to licensees whose reactors are experiencing degraded safety indicators.
5. 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.

⁴ Specifically, any reactor currently listed in Column 2 or 3 of NRC's Reactor Oversight Process chart was included in this directive. http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/actionmatrix_summary.html#am_summary

Thank you very much for your attention to this important matter. Please provide your response no later than close of business on November 19, 2013. If you have any questions or concerns please have your staff contact Michal Freedhoff (Senator Markey, 202-224-2742) or Jacob Smith (Senator Sanders, 202-224-5141.)

Sincerely,



Edward J. Markey
United States Senator



Bernard Sanders
United States Senator