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DOCKET NUMBER
PROPOSED RULE PR 50
(67FR 38427)

August 19, 2002

The Honorable Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemaking and Adjudications Staff

**Re: Proposed Rule: Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor (67 Fed. Reg. 38427)**

Dear Ms. Vietti-Cook:

The Nuclear Regulatory Services Group ("NRSG")[1] submits the following comments on the above-referenced proposed rule published by the Nuclear Regulatory Commission ("NRC") on June 4, 2002. The proposed rule, among other things, would (1) eliminate the need for non-electric utility licensees to provide financial qualifications information as part of the license renewal process for power reactors, and (2) add a new requirement – proposed 10 C.F.R. § 50.76 – that would require any electric utility power reactor licensee that transitions to non-electric utility status without a license transfer to submit the same financial qualifications information that is required for obtaining an initial operating license.

As explained below, the NRSG supports the first aspect of the proposed rule as an appropriate change to reduce unnecessary regulatory burden, but we do not believe the new requirement in proposed Section 50.76 is warranted. The NRSG also supports the comments submitted on behalf of the industry by the Nuclear Energy Institute.

[1] The NRSG is a consortium of seven power reactor licensees represented by the law firm of Ballard Spahr Andrews & Ingersoll, LLP.



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Annette L. Vietti-Cook
August 19, 2002

**Elimination of Financial Qualifications Review at License Renewal Stage**

As restructuring of the electric utility industry has progressed, new business forms have been utilized for the entities that own or operate commercial nuclear power plants. This change has come about as a result of restructuring legislation and policies in many states, which are intended to foster greater competition in the wholesale market for electric generation and result in lower costs of electricity for consumers. Many of the licensees that now own or operate nuclear power reactors do not come within the literal definition of an "electric utility" in 10 C.F.R. § 50.2, which generally includes only regulated utility companies that obtain revenue under cost of service ratemaking. These non-electric utility licensees were subject to the NRC's financial qualifications review process at the time the operating licenses for the respective plants were transferred to them pursuant to 10 C.F.R. § 50.80.

In the future, these licensees will be applying for license renewal for their plants. While electric utilities are not required to submit any financial qualifications information at either the initial licensing or license renewal stage,[2] the NRC's regulations in 10 C.F.R. § 50.33(f)(2) indicate that license renewal applicants that are not electric utilities must submit financial qualifications information in their renewal applications.

The proposed rule would quite appropriately eliminate this requirement. As the NRC recognizes, there are no "financial circumstances uniquely associated with license renewal that warrant a separate financial review." 67 Fed. Reg. at 38429. A financial qualifications review for non-electric utility licensees at the license renewal stage is wholly unnecessary in view of the review performed during the license transfer process and the NRC's ongoing monitoring of licensees' financial circumstances. Accordingly, the NRSG supports the NRC's proposed change.

**Proposed New 10 C.F.R. § 50.76 on Licensee's Change of Status**

The proposed rule states that there is a "potential gap" in the financial qualifications requirements for non-electric utility entities. According to the proposed rule, this gap arises when a licensee transitions from being an electric utility to an entity other than an electric utility without a transfer of its license. In these circumstances, the NRC believes that the licensee might escape any financial qualifications review, thus undermining the basis for eliminating the

[2] Entities that meet the definition of "electric utility" in 10 C.F.R. § 50.2 are exempt from financial qualifications review at the initial licensing and license renewal stages. 10 C.F.R. § 50.33(f)(2).

financial qualification review requirement for non-electric utility applicants for license renewal. As a result, the NRC proposes to adopt a new Section 50.76, *Licensee's change of status; financial qualifications*, that would require an electric utility licensee to notify the NRC no later than 75 days prior to the transition (i.e., ceasing to be an electric utility as defined in Section 50.2) and provide financial qualifications information at that time.

The NRSG believes that this proposed new requirement is unnecessary and unwarranted. First of all, the "gap" in the financial qualifications review process appears to be more perceived than real. The proposed rule does not cite examples of any problems that have arisen in this area, but rather notes that the type of restructuring in which an electric utility licensee would transition into non-electric utility status without a license transfer "will occur rarely, if at all . . . ." 67 Fed. Reg. at 38429. Experience to date shows that licensees have applied for NRC consent to a license transfer when necessary. As noted in the proposed rule, "To date, all utility-to-nonutility transitions by NRC power reactor licensees have been accomplished through restructurings that involved license transfers." 67 Fed. Reg. at 38428.

Furthermore, the NRC has stated that "licensees have an ongoing obligation to inform, and obtain advance approval from the NRC for any changes that would constitute a transfer of the NRC license, directly or indirectly . . . ." Administrative Letter 96-02, *Licensee Responsibilities Related to Financial Qualifications.* Administrative Letter 96-02 goes on to note that licensees should "assure that information regarding their financial qualifications and decommissioning funding assurance that may have a significant implication for public health and safety is promptly reported to the NRC." The NRC also monitors financial and other information affecting licensees on an ongoing basis in order to determine whether a licensee remains an electric utility or otherwise requires additional review of its financial qualifications. 67 Fed. Reg. at 38428; see also NUREG-1577, Rev. 1, *Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance,* at III.1.d.

In view of these existing regulatory mechanisms, it appears that a new regulation is not necessary. The proposed new Section 50.76, in our view, would simply create additional regulatory issues and burdens without any corresponding safety benefit. For example, issues would arise with respect to determining precisely what types of changes would cause a licensee to cease being an electric utility as defined in Section 50.2. In addition, under the proposed new Section 50.76, a licensee would be required to notify the NRC "no later than 75 days prior to ceasing to be an electric utility in any manner not involving a license transfer . . . ." This advance notification requirement could be problematic, since there may well be situations where the licensee and NRC differ as to the impact of a particular change and whether it would cause the licensee no longer to qualify as an electric utility.

A better approach, in our view, would be for the NRC to use this opportunity to update the Section 50.2 definition of electric utility in light of the changes that have occurred in the electric utility industry. For example, the definition should provide flexibility to include utilities that may no longer be subject to cost of service ratemaking. The mere fact that a licensee is no

longer subject to cost-based ratemaking, and instead sells power at market-based rates, does not mean that it lacks adequate assurance of funds to operate plants safely. While such companies may no longer have a guaranteed rate of return, market-based rates for electricity may be more profitable over time, and the companies can reduce market price risks by such actions as entering into long-term power purchase agreements with transmission and distribution companies (affiliated and unaffiliated) and other customers. Similarly, the definition of electric utility should be flexible enough to include entities other than traditional vertically-integrated utilities. Utilities that have "disaggregated" their businesses into separate generating and transmission/distribution entities continue to possess the financial strength to assure adequate funds for safe plant operation.

Accordingly, we believe it would be appropriate for the NRC to broaden the scope of the definition of electric utility in Section 50.2 to reflect the reality of today's market. At a minimum, the definition should be flexible enough to include: (1) a generating company that is part of a diversified holding company or other corporate structure; and (2) an entity that generates and sells electricity at market-based rates, at least so long as the company's market-based rate authority is governed by tariffs that are subject to the jurisdiction of a rate regulatory agency such as the Federal Energy Regulatory Commission.

The NRSG supports the NRC's effort to improve its financial qualifications regulations and appreciates the opportunity to comment on the proposed rule. Please contact us if you have any questions about our comments.

Sincerely,

[Original signed by Daniel F. Stenger]

Daniel F. Stenger
Counsel to Nuclear Regulatory
Services Group