

# RULEMAKING ISSUE (Affirmation)

November 7, 2003

SECY-03-0195

FOR: The Commissioners

FROM: William D. Travers  
Executive Director for Operations /RA/

SUBJECT: FINAL RULE, 10 CFR PART 50, "FINANCIAL INFORMATION REQUIREMENTS FOR APPLICATIONS TO RENEW OR EXTEND THE TERM OF AN OPERATING LICENSE FOR A POWER REACTOR"

## PURPOSE:

To obtain Commission approval to publish in the *Federal Register* a final rule on financial information requirements for licensee applicants seeking to renew or extend the term of an operating license for a power reactor.

## BACKGROUND:

On June 4, 2002, the NRC published a proposed rule in the *Federal Register* (67 FR 38427). The rule proposed to remove the requirement that non-electric utility power reactor licensees submit financial qualifications information in their license renewal applications and to add a new requirement that nuclear power reactor licensees who are electric utilities reorganizing as or changing their status to non-electric utility entities without a license transfer must notify the NRC and submit information on their financial qualifications. The proposed rule sought to reduce unnecessary regulatory burden on licensees seeking renewal of operating licenses and ensure that licensees reorganizing as or changing to non-electric utility entities continue to have financial resources to operate their facilities safely. The public comment period closed on August 19, 2002. Nine comments were received on the proposed rule.

## DISCUSSION:

After considering the public comments, the staff has decided to adopt the proposed rule unchanged as the final rule. The staff does not believe that the license renewal process, in and

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of itself, is sufficiently unique to warrant a separate financial review at the time of the renewal application. Other financial qualifications review processes are available if the need arises. The NRC performs financial qualifications reviews at the time of initial licensing and also when holders of nuclear power plant operating licenses apply for transfers of operating licenses.

These reviews are more rigorous for applicants that are not electric utilities. Additionally, the NRC can evaluate the financial qualifications of a proposed transferee at the time of an impending license transfer with reasonable assurance that the financial information will remain relevant for some period after the license transfer occurs. Finally, paragraph 50.33(f)(4) allows ad hoc reviews when circumstances warrant. The NRC believes that the current regulatory structure is sufficiently flexible to address unforeseen events that may trigger a review of power reactor licensee financial qualifications.

Currently, there is one gap in the NRC's regulatory provisions for evaluating a power reactor licensee's financial qualifications. The NRC's current regulations do not provide for a financial qualifications review when a licensee transitions from an electric utility to an entity other than an electric utility without transferring control of its license. This final rule will rectify the regulatory gap by imposing a requirement that these licensees submit financial qualifications information to the NRC. With the addition of this provision, the NRC believes it has a basis for concluding that it is unnecessary to review financial qualifications information during the license renewal process for non-electric utility licensees that are holders of operating licenses for nuclear power reactors.

The final rule retains the financial qualifications requirements for applicants that wish to renew or extend their licenses for nonpower reactors.

#### COORDINATION:

The Office of the General Counsel has no legal objection to the content of this paper. The Office of the Chief Financial Officer has reviewed this final rule for resource implications and has no objections. The Advisory Committee on Reactor Safeguards (ACRS) and the Committee to Review Generic Requirements (CRGR) has no objections to issuing the final rule.

#### RECOMMENDATION:

That the Commission:

1. Approve the attached notice of final rulemaking for publication in the *Federal Register* (Attachment 1).
2. Certify that the final rule does not have a significant financial impact on a substantial number of small entities. This certification is included in the attached *Federal Register* notice.

3. Note:

- a. That the Chief Counsel for Advocacy, Small Business Administration, will be informed of the certification regarding economic impact on small entities and the reasons for it, as required by the Regulatory Flexibility Act.
- b. That a final Regulatory Analysis has been prepared for this rulemaking (Attachment 2).
- c. That a final Environmental Assessment has been prepared for this rulemaking (Attachment 3).
- d. That the staff has determined that this is not a “major” rule, as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has confirmed this determination with OMB.
- e. That the appropriate congressional committees will be informed of this action.
- f. That a press release will be issued by the Office of Public Affairs when the rulemaking is filed with the Office of the Federal Register.
- g. That copies of the *Federal Register* notice of final rulemaking will be distributed to all power reactor licensees. The notice will be sent to other interested members of the public upon request.

***/RA William F. Kane Acting for/***

William D. Travers  
Executive Director  
for Operations

Attachments:

1. *Federal Register* Notice
2. Regulatory Analysis
3. Environmental Assessment

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ADAMS Accession Nos.:

**Package:** ML032461323  
**SECY:** ML032460681  
**FRN:** ML032460765  
**RA** ML032460795  
**EA** ML032460815

**Public Announcement**

\*\*Concurrence by email \*\*\*Concurrence by ltr.

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