

File

April 27, 1979

UNITED STATES
NUCLEAR REGULATORY COMMISSION

SECY-79-299

CONSENT CALENDAR ITEM

For: The Commissioners

From: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Thru: Executive Director for Operations 

Subject: GENERIC ISSUE OF FINANCIAL QUALIFICATIONS:
LICENSING OF PRODUCTION AND UTILIZATION
FACILITIES

Purpose: To inform the Commission of the results of the staff's study of the generic financial qualifications issue and to request a decision on the enclosed proposed rule-making.

Category: This paper, prepared in accordance with the Commission's Order in Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2) 7 NRC 1 at 20, CLI-78-1 (1978), covers a major policy question.

Issue: Should the Commission change the requirement for a demonstration of financial qualifications or alter the scope of its review of the financial qualifications of applicants for production and utilization facility licenses?

Decision Criterion: Does the alternative adequately address the relationship between financial qualifications and safety and accordingly provide for an appropriate level of staff review of an applicant's financial qualifications?

- Alternatives:
1. The Commission may determine that the requirement for a demonstration of financial qualifications should be retained, and that:
 - a. the current scope of the financial qualifications review is appropriate and no rulemaking is needed, or
 - b. the current scope of the financial qualifications review is appropriate but rulemaking should be initiated to more fully reflect the detailed information required from applicants and the staff review practices, or

Contact:
D. J. Skovholt
492-7492

h-4/pf.50

- c. the current scope of the financial qualifications review is excessive in some respects and rulemaking should be initiated to reduce the scope of review for those applicants whose financial condition so warrants.
2. The Commission may determine that the requirement for a demonstration of financial qualifications should be eliminated and that rulemaking to this effect should be initiated.

Discussion:

In its decision on the financial qualifications of Public Service Company of New Hampshire in Seabrook, supra, (hereinafter, "the Commission's Seabrook decision"), the Commission directed the staff "to initiate a rulemaking proceeding in which the factual, legal, and policy aspects of the financial qualifications issue may be reexamined." This paper reports the results of the staff's study of the generic financial qualifications issue and presents a proposed rulemaking for the Commission's consideration.

Evolution of the Regulations and NRC Staff Practices

Section 182(a) of the Atomic Energy Act provides in pertinent part that:

Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the . . . financial qualifications of the applicant . . . as the Commission may deem appropriate for the license.

Prior to 1968, the Commission's regulations provided only that applications should state: "(f) The financial qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter." 10 CFR 50.33. These regulations did not provide guidance as to how an applicant could demonstrate its financial qualifications.

The Commission adopted the current financial qualification regulations [10 CFR 50.33(f), 10 CFR 50.71 and 10 CFR 50, Appendix C] in 1968, thereby exercising its authority under the Atomic Energy Act to require financial information from license applicants. The regulations currently in effect are more detailed than those in effect prior to 1968 in explaining the types of financial information to be provided by applicants. Section 50.33(f) of 10 CFR Part 50 establishes the basic requirement

for submittal of financial information at both the construction permit stage and the operating license stage. Appendix C of 10 CFR Part 50 elaborates on the types of information to be provided by applicants, and implements the "reasonable assurance" concept of the regulation. That is, an applicant need only demonstrate reasonable assurance of obtaining the requisite funds to pursue the activities contemplated under a permit or license. In other words, the applicant is neither required to show that it actually possesses the required funds nor is it required to demonstrate absolute assurance that it can obtain the funds. In its Seabrook decision, the Commission further interpreted the reasonable assurance standard to mean that an "applicant must have a reasonable financing plan in the light of relevant circumstances." (7 NRC 1 at 18)

Prior to 1974, the NRC staff analysis of applicants' financial qualifications was generally cursory because of the long-standing financial health of the electric utility industry. The analysis involved primarily a review of published financial statements and cost estimates and the comparison of operating and capital ratios with industry composites. Financial qualifications was rarely a contested issue in licensing proceedings. The Arab oil embargo in late 1973 and the general economic recession in 1974 led to financial difficulties for many utilities. A number of nuclear plants and other facilities were postponed or cancelled by utilities because of these financial problems and because of reduced electricity demand forecasts. In response to these circumstances, the NRC staff increased the intensity and scope of its review of the financial qualifications of applicants and licensees. The types and volume of financial information requested from applicants were correspondingly increased. Financial qualifications became a frequently contested issue in NRC licensing proceedings.

As the economy later recovered from the recession, the financial condition of most utilities also improved substantially. However, the NRC staff has maintained the precedents it set in response to the recession in terms of the increased scope of its review and in terms of the information required from applicants. In addition, applicants' financial qualifications continue to be a frequently contested issue in NRC licensing proceedings.

Summary of Public Comments

On May 25, 1978, the staff notified the public (43 FR 22373) of the Commission's order for a study of the generic financial qualifications issue. The staff requested interested members of the public to submit comments on the issue and to propose specific changes to the rules. Comments were requested to be submitted by July 24, 1978. In response to the notice,

seven sets of comments were received. Six of the submittals were from electric utilities, the Edison Electric Institute (EEI) or law firms representing electric utilities. The law firms' clients hold construction permits and operating licenses for nuclear power plants. The seventh set of comments was from the National Consumer Law Center, Inc. An analysis of the public comments received is attached as Enclosure 1. The following is a summary of the comments.

The utilities, the EEI and the law firms recommend that the regulations be revised to substantially reduce the scope of NRC's financial qualifications review especially as it applies to applicants whose rates for service are either self-determined or are determined by state and/or federal regulatory agencies. These commenters generally maintain that a history of successful plant construction and operation coupled with the legal requirements placed on economic regulators together constitute "reasonable assurance" that adequate financing can be obtained. This group of commenters further argue that "cutting corners" in construction or operation is not in the self-interest of the utility. It is imperative that a plant provide long-term operation reliably and safely in accordance with NRC regulations. The commenters say that the financial savings that could be achieved through "corner-cutting" would be small compared to the sums required to complete the project. The risk of detection by NRC inspectors and possible resulting legal action against the utility serve as additional disincentives to violations of NRC's regulations.

One of the above commenters expresses, as an alternative, a preference for complete elimination of the financial qualifications finding as now required by the regulations. The commenter maintains that a causal relationship between financial qualifications and safety has not been demonstrated.

One of the utility commenters, while endorsing its law firm's comments which are among those summarized above, raises a consideration regarding the sources of funds statement that the NRC staff routinely requires of construction permit applicants. The sources of funds statement, while not considered a forecast of what will necessarily occur, is a demonstration by the utility applicant of one method by which it might reasonably finance its overall construction program including the nuclear power plant. The commenter maintains that such projections, if published, (1) could mislead the investing public, possibly leading to liability for the company; and (2) may constitute a violation of federal securities laws. The NRC staff has requested and received the sources of funds statement from a large number of construction permit applicants over the past four years.

A very few of these applicants have requested proprietary treatment of their sources of funds statements using rationale similar to that above. These requests have not been approved. The NRC staff is not aware of any cases of liability accruing to applicants because of the publication of such sources of funds statements. In the past three years, the NRC staff has twice inquired of the Securities and Exchange Commission (SEC) staff regarding the question of possible federal securities law violations. Both SEC replies indicate that the submission of such sources of funds statements by applicants to the NRC and subsequent release of the statements to the public do not contravene SEC requirements. The second and most recent SEC reply (Enclosure 2) is dated December 14, 1978, which is subsequent to the above commenter's submission dated July 21, 1978.

The National Consumer Law Center, Inc. (NCLC) comments that the existing regulation is inadequate in that it does not require the filing of sufficient financial information to demonstrate financial qualifications for a construction permit or an operating license. NCLC provides a detailed list of the types of financial information that should be required of applicants. Most of the suggested information is currently required by the NRC staff in its financial reviews. While much of this data is not specifically referred to in the regulations, the NRC staff regularly obtains it from applicants under NRC's authority to require additional pertinent information. NCLC bases its suggestion for NRC requiring such information on the holding that safe, reliable construction and operation of nuclear facilities is contingent upon the financial qualifications of the applicant. It states that insufficient financing during construction could lead to the use of substandard materials and to costly delays in construction. NCLC further suggests that NRC should promulgate a regulation requiring that nuclear facilities be constructed with a reasonable cost of financing and that failing to do so may financially burden the applicant and the applicant's owners and customers.

Regulatory Experience - Impacts on Safety

The rationale behind NRC's financial review of applicants and licensees centers on the theory that inadequate financing of a licensed activity could have a negative impact on safety. In the Statement of Considerations (33 FR 9704) (1968) accompanying amendments to 10 CFR Section 50.33(f), Section 50.71 and Appendix C, the Commission stated that:

"The Act and the Commission's regulations reflect that the fundamental purpose of the financial qualifications

provision of that section is the protection of the public health and safety and the common defense and security.

Although the Commission's safety determinations required for the issuance of facility licenses are based upon extensive and detailed technical review, an applicant's financial qualifications can also contribute to his ability to meet his responsibilities on safety matters."

In this study of the generic financial qualifications issue, the NRC staff has sought to determine whether NRC or its predecessor, the AEC, have knowledge of any instance(s) in which financial qualifications have impacted on safety. The NRR staff formally inquired (Enclosure 3) of the IE staff to determine "... what instances, if any, have been discovered in which a utility performed or authorized an action detrimental to public health and safety for the purpose of reducing expenditures?" IE headquarters replied (Enclosure 4) that it had surveyed its regional offices and that it had not identified any instances of such actions. Although the IE inspection program is generally considered to be very effective in discovering defects in construction and operation, it should be noted that the program audits only a sample of the regulated activity. Therefore, although IE is not aware of any incidents of "corner-cutting" by utilities for financial reasons, it cannot guarantee that it has never occurred. Accordingly, the staff believes that there is value to safety in having an independent check on applicants such as a financial qualifications review.

Discussion of Alternatives 1/

Alternative 1.a. The Commission may determine that the requirement for a demonstration of financial qualifications should be retained, and that the current scope of the financial qualifications review is appropriate and no rulemaking is needed.

1/ As discussed above, the National Consumer Law Center, Inc. filed comments with the Commission suggesting that its financial qualifications requirements be expanded. The staff considered these comments during the course of its study. However, such an expansion is not listed below because the staff concluded in its study that the detailed measures suggested by NCLC reflected the current staff practice and were thereby covered by alternative 1.b.; in the staff's judgment, no more exhaustive analyses are practicable due to limitations of the state of the art.

- Pro: (1) The Commission retains an element in its system of multiple and redundant safety reviews and inspections.
- (2) The most stringent financial qualifications requirements that are considered rational continue to be imposed.
- Con: (1) Unresponsive to commenters who contend that current scope is excessive for applicants who have demonstrated financial qualifications outside of the NRC review.
- (2) Existing regulations do not fully reflect the details of current requirements on applicants and staff review practices.
- (3) Public involvement in this generic issue ends because rulemaking is not initiated.

Alternative 1.b. The Commission may determine that the requirement for a demonstration of financial qualifications should be retained, and that the current scope of the financial qualifications review is appropriate but rulemaking should be initiated to more fully reflect the detailed information required from applicants and the staff review practices.

- Pro: (1) The Commission retains an element in its system of multiple and redundant safety reviews and inspections.
- (2) The most stringent financial qualifications requirements that are considered rational continue to be imposed.
- (3) Regulations fully reflect current requirements on applicants and staff review practices.
- Con: (1) Unresponsive to commenters who contend that current scope is excessive for applicants who have demonstrated financial qualifications outside of the NRC review.
- (2) Under favorable economic and financial conditions, may require excessively detailed information from applicants.

Alternative 1.c. The Commission may determine that the requirement for a demonstration of financial qualifications should be retained, and that the current scope of the financial qualifications review is excessive in some respects and rulemaking should be initiated to reduce the scope of review for those applicants whose financial condition so warrants.

- Pro:
- (1) The Commission retains an element in its system of multiple and redundant safety reviews and inspections.
 - (2) Responsive to commenters who contend that current scope is excessive for applicants who have demonstrated financial qualifications outside of the NRC review.
 - (3) Regulations fully reflect requirements on applicants and staff review practices.

Con: Unresponsive to commenter who contends that requirements on applicants should be expanded.

Alternative 2. The Commission may determine that the requirement for a demonstration of financial qualifications should be eliminated 2/ and that rulemaking to this effect should be initiated.

Pro: Responsive to commenter who contends that a causal relationship between financial qualifications and safety has not been demonstrated.

- Con:
- (1) The Commission relinquishes an element in its system of multiple and redundant safety reviews and inspections.
 - (2) Unresponsive to commenter who contends that requirements on applicants should be expanded.

Analysis:

The NRC staff's study of the generic financial qualifications issue has included the following elements: consideration of public comments solicited on the matter; review and analysis of the NRC licensing case which included the Commission's own review of the issue as well as its Order for this study contained in its Seabrook decision; review and analysis of other NRC and AEC licensing cases which have involved financial qualifications; extensive discussions among the NRC staff who are involved in the financial reviews of applicants; and inquiries and discussions with IE officials regarding regulatory experience during the two decades of power reactor construction and operation. As a result of this study, the NRC staff has concluded that the Commission's decision on the generic financial qualifications issue is between two basic alternatives: (1) to retain, or (2) to eliminate the requirement for a demonstration

- 2/ It should be noted that in the exercise of its discretionary authority in this area, the Commission would need to make a determination pursuant to Section 182 of the Atomic Energy Act, that financial qualification information is not necessary.

of financial qualifications in the licensing of production and utilization facilities. The first alternative, if selected, would involve subsidiary decisions regarding the appropriate scope of the review and the need to more fully reflect both the information required from applicants and the staff review practices. The NRC staff has analyzed these alternatives and the subsidiary issues in light of the need to adequately address the relationship between financial qualifications and safety.

Five of the seven public commenters argue that applicants whose rates for service are either self-regulated or determined by state and/or federal regulatory agencies should be considered financially qualified. The NRC staff agrees that such applicants that are in good financial condition should not normally be subjected to extensive financial reviews. Regulatory commissions that have jurisdiction over the rates charged for utility services are required by law to allow the utility company to charge rates that will enable it to fully perform its duties to the public, assuming prudent management of the company.^{3/} This includes both the attraction of capital and the recovery of proper operating costs necessary for the discharge of the utility's public responsibilities. However, the requirement on regulatory commissions does not assure financial health of the enterprise. Factors such as imprudent utility management or inadequate financial planning may impede efforts of the regulatory commissions to provide the utility with adequate rates.

The staff notes that not all applicants and licensees under 10 CFR Part 50 enjoy the financial protections accorded to regulated, monopolistic companies. Most owners of research reactors, testing facilities, fuel reprocessing plants, manufacturing facilities, and other Part 50 production and utilization facilities (other than commercial nuclear power reactors) are either unregulated, profit-making companies or they are dependent on budget authority from states or from private institutions. The sources of funds to assure safe construction and operation of a licensed facility are not as assured for such entities as for the regulated utilities or the utilities that set their own rates.

The staff also notes that several relevant regulatory initiatives have been adopted subsequent to the enactment of the Atomic Energy Act of 1954 that contained the financial qualifications requirement. These initiatives include the establishment of comprehensive quality assurance requirements on licensees, the

^{3/} See, Bluefield Water Works and Improvement Co. v. Public Service Commission of the State of West Virginia, 262 U.S. 679, (1923); and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, (1944).

establishment of civil penalties as enforcement vehicles, the promulgation of 10 CFR 21, "Reporting of Defects and Noncompliance", and the initiation of the program for NRC resident inspectors at reactor sites. Each of these measures provides additional assurances regarding proper construction and operation and, thereby, serves to reduce the safety dependence on financial qualifications.

However, the staff has concluded that although technical reviews and inspection efforts are very effective direct methods of discovering deficiencies that could affect safety, the analysis of financial qualifications is an additional method, albeit indirect, of determining an applicant's ability to satisfy safety requirements. The financial qualifications review is one element in the Commission's system of multiple and redundant safety reviews and inspections. The purpose of the financial qualifications review in this system is analogous to the overlapping protective echelons of the "defense-in-depth" approach used in designing nuclear power plants.

The staff has also concluded that the scope of the financial qualifications review can appropriately be reduced for applicants in good financial condition whose rates for service are either regulated or self-determined. The Commission should retain the prerogative to increase the scope of its review in response to a financially-troubled applicant or licensee or in response to significant adverse economic developments. In addition, the staff recommends that the Commission retain its current scope of review for those applicants not enjoying regulated status or not having authority to set their own rates.

Appendix C of the staff's proposed revision (Enclosure 5) to 10 CFR Part 50 specifies criteria that demonstrate conclusive evidence of financial qualifications by applicants. An applicant (1) whose rates for service are determined by state and/or federal regulatory agencies (or are self-determined), and (2) whose most senior long-term debt is rated "A" or higher by both of the major securities rating services would be deemed financially qualified for a construction permit. An applicant that satisfies the first criterion (rate-setting) would be deemed financially qualified for an operating license. Applicants satisfying the specified criteria for either a construction permit or an operating license would not be subject to extensive financial qualifications reviews by the staff. Further inquiry and adjudication of an applicant's or a licensee's financial qualifications would be foreclosed after the Commission determines that compliance with the criteria has been demonstrated. An exception to this would be the case of an applicant or a licensee, previously found financially qualified through the criteria that demonstrate conclusive evidence, that no longer

satisfies either one or both of the specified criteria. An applicant that does not satisfy the criteria would demonstrate its financial qualifications by providing additional, more detailed information at the Commission's request. The proposed regulation also requires an applicant that had previously been found financially qualified by satisfying the criteria to promptly report to the Commission if and when it no longer satisfies one or more of the specified criteria. Enclosure 6 provides a more detailed discussion of the criteria for demonstrating conclusive evidence of financial qualifications.

Proposed Appendix C also provides that an ownership interest of less than five percent in a facility by any one applicant would generally be considered insignificant by the Commission from the financial qualifications standpoint and would normally not be subject to the financial qualifications review. No safety issue is involved because an owner of less than five percent of a facility normally has no significant control over the construction or operation of the facility. The Commission would reserve the right under the proposed rule to review an ownership interest of less than five percent if it appears that extenuating circumstances (such as a significant level of control) may be present. The provisions for insignificant financial interests are discussed in greater detail in Enclosure 6.

Applicants for research reactor operating licenses, or renewals thereof, should be required to demonstrate reasonable assurance of obtaining the funds to permanently shut down the reactor and maintain it in a safe condition (decommissioning). The existing regulation does not contain this provision. The components of a research reactor would be highly radioactive if it had been operated at a high power level for a number of years. The cost of decommissioning such a facility could be substantial, especially if it were to be dismantled.

It is noted that the Commission is now considering development of more explicit overall policy for nuclear facility decommissioning and amending its regulations in 10 CFR Parts 30, 40, 50 and 70 to include more specific guidance on decommissioning criteria for production and utilization facility licensees and byproduct, source and special nuclear material licensees. In December 1978, NUREG-0436, Revision 1, "Plan for Reevaluation of NRC Policy on Decommissioning of Nuclear Facilities," was published. The plan includes a review of financial assurance relating to the cost of decommissioning a nuclear facility at the end of its useful life. Since the generic decommissioning study has not yet been completed, the rule change proposed in this policy paper does not reflect results of that study.

Enclosure 6 is a detailed analysis of changes to current requirements that would be effected by the proposed rule. Enclosure 7 is a value/impact analysis of the proposed rule. Enclosure 8 is a comparative text of the proposed rule vis-a-vis the current rule.

It is noted that Appendices F and M of Part 50 require financial qualifications findings regarding fuel reprocessing plants (and related waste management facilities) and manufacturing facilities, respectively. The information required of applicants is in accordance with the provisions of 50.33(f) and Appendix C. The proposed rule change, herein, would not affect the financial qualifications requirements as they relate to Appendices F and M.

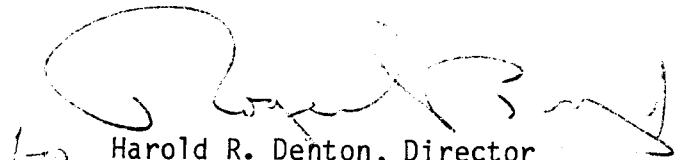
This action involves a reduction in resource requirements due to the reduction in the number of rigorous evaluations of financial qualifications of power reactor applicants.

Recommendations: That the Commission:

1. Approve Alternative 1.c., to retain the requirement for a demonstration of financial qualifications, but reduce the scope of review for those applicants whose financial condition so warrants;
2. Approve the enclosed notice of proposed rulemaking and proposed regulations (Enclosure 5) for publication in The Federal Register; and
3. Note that the staff estimates that under current economic and financial conditions the majority of current utility applicants and licensees under Part 50 would satisfy criteria in the proposed regulation that constitute conclusive evidence of financial qualifications. Accordingly, the scope of the staff's review of such applicants' financial qualifications would be substantially reduced from the current scope.

Coordination:

The Office of Standards Development concurs in this paper. The Office of the Executive Legal Director has no legal objection.


for Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosures:
See next page

Enclosures:

1. Abstract of Comments and Staff Response
2. SEC Letter of December 14, 1978
3. NRR "Request for IE Input Relative to Financial Qualifications Study," November 2, 1978
4. IE Reply Letter, December 15, 1978
5. Federal Register Notice of Proposed Rulemaking.
Proposed Regulations: 10 CFR 50.33(f), 50.54(q),
Appendix C, 10 CFR 50
6. Analysis of Proposed Regulation - Changes to Current Requirements
7. Value/Impact Analysis of Proposed Regulation
8. Comparative Text - Proposed Regulation

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, May 11, 1979.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT May 7, 1979, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of May 21, 1979. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

Commissioners
Commission Staff Offices
Exec. Dir. for Ops.
Regional Offices
ACRS
ASLBP
ASLAP
Secretariat

ENCLOSURE 1

ENCLOSURE 1
ABSTRACTS OF COMMENTS
AND STAFF RESPONSE

On May 25, 1978, the staff notified the public (43 FR 22373) of the Commission's order for a study of the generic financial qualifications issue. The staff requested interested members of the public to submit comments on the issue and to propose specific changes to the rules. Comments were requested to be submitted by July 24, 1978. In response to the notice, seven sets of comments were received. Six of the submissions were from electric utilities, the Edison Electric Institute (EEI) or law firms representing electric utilities. The law firms' clients hold construction permits and operating licenses for nuclear power plants. The seventh set of comments was from the National Consumer Law Center, Inc. The following is an analysis of the comments. Many of the comments from the utilities, the EEI and the law firms are similar. These comments are paraphrased and responded to as a group. Comments that are unique to one commenter are responded to individually.

1. The utilities, the EEI and the law firms recommend that the regulations be revised to reduce the types and amount of financial information required from applicants. They recommend that NRC substantially reduce the scope of its financial qualifications review especially as it applies to applicants whose rates for service are either self-determined or are determined by state and/or federal regulatory agencies. These commenters generally maintain that a history of successful plant construction and operation coupled with the legal requirements placed on economic regulators

together constitute "reasonable assurance" that adequate financing can be obtained. This group of commenters further argues that "cutting corners" in construction or operation is not in the self-interest of the utility. It is imperative that a plant provide long-term operation reliably and safely in accordance with NRC regulations. The commenters say that the financial savings that could be achieved through "corner-cutting" would be small compared to the sums required to complete the project. The risk of detection by NRC inspectors and possible resulting legal action against the utility serve as additional disincentives to violations of NRC's regulations.

Part of the staff's rationale behind its proposed rulemaking is substantially similar to that expressed by the above commenters. Under the proposed rule an applicant that is both in good financial condition and whose rates for service are either self-determined or established by regulatory agencies would be found financially qualified. The staff has proposed to rely on bond ratings set by recognized, independent agencies as the measure of financial condition. An applicant meeting the specified criteria would not be subject to an extensive financial qualifications review.

The comments of Shaw, Pittman, Potts & Trowbridge, Washington, D. C., while included in the group comments above, express, as an alternative, a preference for complete elimination of the financial qualifications finding as now required by the regulations. The commenter maintains that a causal relationship between financial qualifications and safety has not been demonstrated.

Enclosure 1

"In the absence of a clear regulatory purpose to be served by the requirement of financial qualifications, we recommend that the Commission initiate a rulemaking proceeding to consider the elimination of the requirement, an action that is within the Commission's discretion." Shaw, et al.

As a result of its study of the generic financial qualifications issue, the staff has concluded that although technical reviews and inspection efforts are very effective direct methods of discovering deficiencies that could affect safety, the analysis of financial qualifications is an additional method, albeit indirect, of determining an applicant's ability to satisfy safety requirements. The staff believes that there is value to safety in having an independent check on applicants such as a financial qualifications review. This review is one element in the Commission's system of multiple and redundant safety reviews and inspections. The purpose of the financial qualifications review in this system is analogous to the overlapping protective echelons of the "defense-in-depth" approach used in designing nuclear power plants.

It is important to note that not all applicants and licensees under 10 CFR Part 50 enjoy the financial protections accorded to regulated, monopolistic companies. Most owners of research reactors, testing facilities, fuel reprocessing plants, manufacturing facilities, and other Part 50 production and utilization facilities (other than commercial nuclear power reactors) are either unregulated, profit-making companies or they are dependent on budget authority from states or from private institutions. The sources of funds to assure safe construction and operation of a licensed facility are not as assured

for such entities as for the regulated utilities or the utilities that set their own rates. Accordingly, the former would be subject to a more detailed financial review under the proposed rule than would the utilities meeting specified criteria.

2. Cleveland Electric Illuminating Company (CEI), Cleveland, Ohio.

"The Company is concerned that such projections [sources of funds statement], if submitted and published through oversight or design, could mislead the securities buying public and could expose the Company and its personnel to securities laws violations and liabilities...without any corresponding and meaningful benefit to the Commission's decision making processes under the present circumstances."

Edison Electric Institute, Washington, D. C.

"Additional information, such as special projections and analyses prepared by an applicant for the sole purpose of complying with the Staff's informational requirements, would be regarded as proprietary by some utilities, who might request that it be accorded the protection of in camera hearings."

STAFF RESPONSE. The sources of funds statement, routinely required of construction permit applicants, is a demonstration by the utility of one method by which it might reasonably finance its overall construction program including the nuclear power plant. It is not considered a forecast of what will necessarily occur. CEI maintains that such projections, if published, (1) could mislead the investing public, possibly leading to liability for the company; and (2) may constitute a violation of federal securities laws. The NRC staff has requested and received the sources of funds statement from a large number of construction permit applicants over the past four years.

A very few of these applicants have requested proprietary treatment of their sources of funds statements using rationale similar to that above. These requests have not been approved. The NRC staff is not aware of any cases of liability accruing to applicants because of the publication of such sources of funds statements. In the past three years, the NRC staff has twice inquired of the Securities and Exchange Commission (SEC) staff regarding the question of possible federal securities law violations. Both SEC replies indicate that the submission of such sources of funds statements by applicants to the NRC and subsequent release of the statements to the public do not contravene SEC requirements. The second and most recent SEC reply is dated December 14, 1978, which is subsequent to CEI's submission dated July 21, 1978.

3. National Consumer Law Center, Inc. (NCLC), Boston, Massachusetts.

"The existing regulation is inadequate in that there is no requirement for the filing of sufficient financial information to establish and review the financial qualifications of an applicant for a construction permit or operating license. ...The construction of safe, reliable nuclear facilities is contingent upon the financial ability of the applicant to construct and operate the facilities in the prescribed manner."

NCLC goes on to recommend in detail the specific types of financial information that should be required of applicants.

STAFF RESPONSE. The staff currently requires the submittal of extensively more financial information than is specifically identified in the regulation. In fact, the information currently required of applicants is substantially similar to that suggested by NCLC. The staff has concluded that this volume of material is not required from applicants that are in good financial condition and whose rates for service are either regulated or

self-determined. The experience of two decades of reactor construction and operation indicates that extensive financial reviews of such applicants are not useful. Applicants that do not meet these criteria would be subject, under the proposed regulation, to a more extensive review.

COMMENT. "Does NRC's decision that a company has reasonable assurance of obtaining the necessary funds translate into a situation where a plant is to be built at any and all costs?"

"The regulation should include the concept of reasonable costs."

"The regulation in its present form is in effect allowing the applicant to construct at any cost regardless of the need by not requiring that reasonable cost of financing be considered."

STAFF RESPONSE. The motivating force and primary objective of NRC regulation is assurance of public health and safety. NRC's responsibility under the financial qualifications regulations is to determine whether the applicant has reasonable assurance of obtaining the necessary funds to pursue the activities for which a permit or license is sought. NRC is not an economic regulatory agency. Limitations on its regulatory authority are stated and implied, respectively, in Sections 271 and 272 of the Atomic Energy Act. State public utilities commissions and the Federal Energy Regulatory Commission have primary responsibility regarding questions of reasonable cost.

COMMENT. "Unlike the other paragraphs of section 50.33, paragraph 50.33(f) requires an active demonstration of financial qualifications through a presentation of data. The other sections require a mere recitation of easily ascertainable facts. The fact that the requirement for financial qualifications is included in the general section minimizes the importance of demonstrating financial qualifications."

"A separate and distinct section should set forth the necessity of demonstrating financial qualifications of applicants for construction permits or operating licenses."

STAFF RESPONSE. The NRC staff has not perceived any downgrading by applicants or others of the importance of the financial qualifications requirement because of its location in the regulations. It is noted that the requirements for commercial, industrial and testing facilities are elaborated on in Appendix C to 10 CFR Part 50.

COMMENT. "The Regulations should contain a provision requiring that the review of the data presented to establish financial qualifications be independent of or, in the alternative, be in conjunction with determinations made by the state or federal regulatory agencies."

STAFF RESPONSE. The NRC's review of an applicant's financial qualifications is independent of the reviews done by state and federal economic regulatory agencies. The staff reviews decisions by these agencies relating to applicants but reserves the right to make its own interpretation of them. Economic regulatory agencies have a legal responsibility to set rates such that the utility may earn a reasonable rate of return. In view of this, the staff has proposed that the regulated status of a utility be used as one criterion to demonstrate conclusive evidence of financial qualifications.

4. Commonwealth Edison (CE), Chicago, Illinois.

(CE notified the staff that in addition to its own comments, it supports the more detailed comments of the Edison Electric Institute.)

"Appendix C takes the position that, ordinarily, for an established organization, current annual financial statements will provide sufficient information for the Commission. Nothing in Seabrook suggests that, as a routine matter, more is needed, just as nothing in the present rule precludes some more detailed inquiry if one appears necessary. Under these circumstances we suggest that the current rules are adequate."

Enclosure 1

STAFF RESPONSE. The NRC staff has concluded that the current rules need to be revised to reflect the favorable status of electric utilities that are in good financial condition. Such utilities that meet specified criteria would not be subject to an extensive financial qualifications review. Under the proposed rule, applicants that do not satisfy the specified criteria would be subject to a more detailed review. The proposed rule maintains the NRC's authority to obtain additional financial information where it deems necessary.

5. Edison Electric Institute (EEI), Washington, D. C.

"The Commission's current requirements for the submittal of financial data involve the use of excessive uniformity. The Staff's review process would be improved if it included recognition of the numerous distinctions between established utilities and newly organized applicants. Such recognition could then be transformed into Staff data requests varied in content depending on the applicant."

STAFF RESPONSE. The NRC staff has for some time made clear distinction between established utilities and newly organized applicants through data requests and financial analyses that are tailored to the type of applicant. The NRC staff also distinguishes between other factors that affect the data requested and the analysis (e.g., whether the applicant is investor-owned, municipal, cooperative, or owned by a state or federal agency). These distinctions would be maintained under the proposed rule.

COMMENT. "...[the] Commission should not attempt to alter the broad standard it currently employs in judging an applicant's financial qualifications. That standard consists of requiring an applicant for a construction permit or an operating license to show that it has reasonable assurance of obtaining the funds necessary to cover construction costs and related fuel cycle costs, or to cover estimated operating costs. 10 C.F.R. § 50.33(f). It is theoretically possible to define with precision the 'reasonable assurance' standard by developing specific tests which

purportedly would demonstrate the basis for an applicant's reasonable assurance of obtaining the necessary capital. However, such tests would require constant adjustment in order to perform their intended function. The process of adjustment itself would render such standards useless in any practical sense."

STAFF RESPONSE. The proposed rule does not alter the "reasonable assurance" standard of the financial qualifications finding. It does, however, establish criteria that constitute conclusive evidence of financial qualifications for applicants that are regulated utilities (or that set their own rates) and that are in good financial condition. Bond ratings by the major securities rating agencies would be the measure of financial condition under the proposed rule. Such ratings have long been considered highly independent and are widely accepted by industry, investors and government. It is not foreseen that this standard would require periodic adjustments.

COMMENT. "Pending issuance of the revised regulations, the Staff should stop requiring established, operating utilities to provide information not routinely provided to the financial and investment communities. The Staff should forthwith (a) comply with Appendix C until new requirements have been approved by the Commission, and (b) in the absence of special circumstances, complete its review of financial qualifications in accordance with Appendix C prior to going to the Advisory Committee on Reactor Safeguards."

STAFF RESPONSE. The NRC staff's financial review procedures are in accord with 10 CFR 50.33(f) and Appendix C to 10 CFR Part 50. They have been upheld by the NRC licensing and appeal boards, by the Commission itself and by the U. S. Court of Appeals. The staff's authority to require additional financial information other than that specifically identified in the regulations is found at item IV, Appendix C to 10 CFR Part 50. The financial qualifications review is normally performed near the end of the

staff's licensing process in order that the most up-to-date information may be utilized. Performance of this review earlier in the licensing process would often lead to repeating the review later as new financial developments of the applicants are reported; this would cause undue burden on applicants and the staff.

6. Debevoise & Liberman, Washington, D. C.

"Another alternative might be provided along the following lines. Financial qualifications would be shown by submitting appropriate opinion letters from qualified third parties. For example, an applicant might submit a letter from a firm of national reputation in the securities field to the effect that it has no reason to expect that any peculiar or unique difficulty would be experienced by the applicant in marketing securities (short and long term debt or, as applicable, equity securities) in specified approximate amounts sufficient, over the approximate period in question, to provide the funds necessary (together with other sources of funds, as applicable) for construction or operation."

STAFF RESPONSE. Although not proposing the use of opinion letters, the staff has proposed that a utility's bond ratings (issued by third parties, the rating agencies) be used as a criterion for conclusive evidence of financial qualifications for a construction permit. The major securities rating agencies have long been respected for their independence and for the quality of analysis behind their ratings. The staff perceives a potential problem in continually having to verify the independence and the quality of analysis underlying opinion letters.

COMMENT. "The NRC presently requires an applicant for a Section 103 operating license to establish reasonable assurance that it will have or be able to obtain funds for decommissioning by or at the time of license termination. Fundamental reform would recognize that the NRC has at most an ancillary role in regard to decommissioning costs, and would eliminate this requirement."

STAFF RESPONSE. The NRC has regulatory jurisdiction over the decommissioning phase of a facility's life just as it does during construction and operation of the facility. It is the staff's view that the financial qualifications requirement concerning the decommissioning phase should be retained because the health and safety of the public is involved during this phase. The staff sees a particular need for retaining this portion of the review because methods for funding decommissioning costs are unsettled in many states.

ENCLOSURE 2

ENCLOSURE 2



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 14, 1978

Milton J. Grossman, Esquire
Chief Hearing Counsel
Office of the Executive
Legal Director
Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Grossman:

I am writing in response to your letter of August 9, 1978 and several subsequent conversations with members of the staff regarding the public availability of certain financial information supplied to the Nuclear Regulatory Commission ("NRC") by Duke Power Company, Cleveland Electric Illuminating Company, and other applicants for nuclear facility construction permits and operating licenses (the "applicants").

The facts, as more fully detailed in your letter and enclosures, are as follows. Pursuant to section 182(a) of the Atomic Energy Act of 1954 and NRC rules and regulations, the NRC staff must determine the financial qualifications of applicants for nuclear facility construction permits. Accordingly, the NRC requests applicants to submit certain additional financial information which includes a projected source of funds statement over the relevant construction period, with underlying assumptions, showing how anticipated construction expenditures might be covered by internal and external financing sources. Your previous letter dated January 2, 1976 (Enclosure 1 with your August 9, 1978 letter) indicates that the NRC staff does not consider the sources of funds statement as a financial forecast, but rather looks to the statement for a demonstration of one possible way by which further construction projects, including the subject facility of the application, might reasonably be financed. Applicants generally have included a disclaimer on their sources of funds statements to the effect that they should not be considered forecasts.

Enclosure 2

Milton J. Grossman, Esquire
Page 2

The NRC has a general policy of full public disclosure regarding any information submitted to or prepared by it that forms part of the basis of its regulatory decisions regarding nuclear reactors. You indicate that the applicants have requested the withholding from public availability of portions of their projected sources of funds statements over the period of construction. In support of these requests, the applicants have argued that (1) the federal securities laws as currently administered by this Commission prohibit or materially restrict the publication of projections and (2) if the NRC places these projections in the public domain, these applicants will have to comply with all duties and liabilities of making projections on a reasonable basis and keeping them up to date by proper public revision.

As you are aware, in Securities Act Release No. 5992, (copy enclosed) November 1, 1978, the Commission issued a statement generally encouraging companies to disclose projections both in their filings with the Commission and in general. To that end, the Commission also adopted revised guidelines for the disclosure of projections in Commission filings and proposed for comment a "safe-harbor" rule that would provide protection from the liability provisions of the federal securities laws for reasonably based projections that are disclosed in good faith.

In Release No. 5992, the Commission specifically noted that issuers have raised questions regarding their obligations under the federal securities laws with respect to projection information required to be submitted to other federal and state regulatory authorities. The Commission further stated that in its view, the submission of this type of information to federal or state regulatory authorities pursuant to their requirements under circumstances in which it would be publicly available would not in and of itself violate the federal securities laws or require issuers to make public projections in filings with the Commission or otherwise. The Commission also reminded issuers of their general obligation to assure that material facts concerning their financial condition are

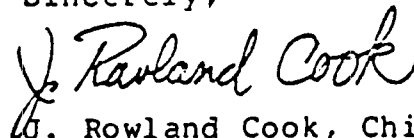
Enclosure 2

Milton J. Grossman, Esquire
Page 3

promptly and fully disclosed and that information submitted does not become misleading by virtue of subsequent events. However, in this regard, it was suggested that issuers may wish to consider the appropriateness of clearly distinguishing such information from any projections already made, or clearly indicating that the information should not be considered as a projection for any purpose other than consideration by the requesting authority. It was also suggested that issuers may wish to consider the appropriateness of filing a report on the Commission's Form 8-K, in which the furnishing of this information could be disclosed and the purpose of its submission and nature of its use clarified.

Based upon the information presented in your letter, it is the opinion of this Division that submission of this information to the NRC by the applicants and subsequent release of it to the public would not contravene the requirements of this Commission. This opinion assumes that any projection information contained therein has a reasonable basis. Moreover, since the NRC does not regard this information as a financial forecast and applicants include a disclaimer to this effect with their submissions, this Division does not believe that the public availability of this information would impose on applicants a burden to publicly revise and update the material contained therein. However, to the extent that subsequent material facts regarding the financial condition of applicants would indicate that previously disclosed assessments no longer have a reasonable basis, full and prompt disclosure of these facts may be required.

Sincerely,



W. Rowland Cook, Chief
Office of Disclosure Policy
and Proceedings

Enclosure

Enclosure 2

ENCLOSURE 3

ENCLOSURE 3

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



NOV 2 1978

MEMORANDUM FOR: Harold D. Thornburg, Director, Division of Reactor
Construction Inspection, IE

FROM: Donald J. Skovholt, Assistant Director for Quality
Assurance and Operations, DPM

SUBJECT: REQUEST FOR IE INPUT RELATIVE TO FINANCIAL QUALIFI-
CATIONS STUDY

10 CFR 50 requires the NRC staff to make a determination of the financial qualifications of an applicant prior to issuing a construction permit or operating license. This requirement stems from the Atomic Energy Act and reflects the belief that adequate financial resources is an issue important to the protection of public health and safety.

In January 1978, the Commission directed the staff to initiate a rulemaking proceeding in which the factual, legal and policy aspects of the financial qualifications issue will be considered. The scope of this inquiry will involve both the criteria and methodology for making the financial qualifications determination and the relevance of the financial qualifications issue to assurance of public health and safety. The staff has commenced this effort and, in response to a Federal Register notice, has received public comments on the matter.

Several of the public comments from representatives of the utility industry were in refutation of the presumption that lack of adequate finances may lead to "corner-cutting" which would adversely impact on assurance of public health and safety. Commenters contended that this was a specious argument in that a utility must rely on safe and reliable operation of a generating station for many years, and it would be contrary to its own self interests, as well as to its public responsibilities, to cut corners or scrimp if this had adverse impact on safety or reliability.

In order to consider the experiences acquired by NPC during the two decades of power reactor construction and operation, we request input from the Office of Inspection and Enforcement regarding the following question: In light of the inspection activities and consideration of construction deficiency reports and licensee event reports by IE, what instances, if any, have been discovered in which a utility performed or authorized an action detrimental to public health and safety for the purpose of reducing expenditures? Citation of the particulars concerning each such action is requested. I

Enclosure 3

NOV 2 1978

should note that we are aware of instances in which suppliers and contractors have taken such actions but these would not be germane to this study unless the utility had authorized them and thereby reduced its costs. Further, prudence in fiscal management by utilities and efforts to improve efficiency would not be relevant unless they detracted from meeting commitments to NRC, were in opposition to standard good practice or otherwise adversely impacted the assurance of public health and safety.

Since the financial qualifications requirement has greater impact at the CP stage, instances involving plant design, construction and initial testing are most relevant; however, identification of instances during plant operations, maintenance and modifications is also requested.

We would be happy to discuss this matter if you desire. In order to meet our schedule for reporting to the Commission, a response from IE by December 15, 1978 is requested.

Original Signed by.
Donald J. Skovholt

Donald J. Skovholt
Assistant Director for Quality
Assurance and Operations
Division of Project Management

cc: R. S. Boyd
N. C. Moseley
G. W. Reinmuth
J. H. Sniezek
J. C. Petersen

Enclosure 3

ENCLOSURE 4



ENCLOSURE 4

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DEC 15 1978

MEMORANDUM FOR: Donald J. Skovholt, Assistant Director for Quality Assurance and Operations, DPM

FROM: Harold D. Thornburg, Director, Division of Reactor Construction Inspection, IE

SUBJECT: REQUEST FOR IE INPUT RELATIVE TO FINANCIAL QUALIFICATIONS STUDY

Your memorandum of November 2, 1978, requested IE input for the Commission relative to financial qualifications of the licensees.

We have surveyed the regions and have not identified any instance "in which a utility performed or authorized an action detrimental to public health and safety for the purpose of reducing expenditures." As noted in your memorandum, we are aware of instances where prudent fiscal management by utilities have been exercised however, we were unable to discern actions by utilities that meet the criteria set forth in your memorandum.

We would be happy to discuss this matter with you further if you so desire.

A handwritten signature in cursive script, reading "Harold D. Thornburg", is positioned above the typed name and title.

Harold D. Thornburg
Director
Division of Reactor
Construction Inspection
Office of Inspection and Enforcement

Enclosures:

1. Memo, RFHeishman to GWReinmuth,
dated 12/6/78
2. Memo, WEVetter to RFHeishman,
dated 11/28/78
3. Memo, DThompson to RFHeishman,
dated 11/29/78

Enclosure 4

DJSkovholt

- 2 -

DEC 15 1970

cc: R. F. Heishman, RIII
R. H. Engelken, RV
B. H. Grier, RI
N. C. Moseley, IE
G. W. Reinmuth, IE
K. V. Seyfrit, RIV
J. G. Keppler, RIII
J. P. O'Reilly, RII

Enclosure 4



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

December 6, 1978

MEMORANDUM FOR: G. W. Reinmuth, Assistant Director, Division of
Reactor Construction Inspection, IE

FROM: R. F. Heishman, Chief, Reactor Construction and
Engineering Support Branch, RIII

SUBJECT: REQUEST FOR FINANCIAL INFORMATION BY D. SHOVHOLT
(AITS H10284F3)

Enclosed is a draft memorandum for Mr. Thornburg's signature relative to the above request. Copies of the information received from the other regions are attached for your information. Regions I and V responded verbally. This closes out the action item and we would be happy to discuss this matter with you further if you so desire.

A handwritten signature in cursive script, appearing to read "R. F. Heishman", is written above the typed name.

R. F. Heishman, Chief
Reactor Construction and
Engineering Support Branch .

Enclosures:
As stated

cc w/encls:
J. G. Keppler
G. Fiorelli



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

November 28, 1978

MEMORANDUM FOR: R. F. Heishman, Chief, Reactor Construction &
Engineering Support Branch, RIII

FROM: W. E. Vetter, Assistant to the Director, RIV

SUBJECT: REQUEST FOR FINANCIAL INFORMATION BY D. SKOVHOLT
(AITS H10284H3)

Consistent with G. W. Reinmuth's memo to you, same subject, dated November 7, 1978, this is to advise you that:

Based on a survey of Region IV Construction Branch personnel, review and comment by the Region IV RO&NS Branch Branch Chief, and based on my own review of Don Skovholt's November 2, 1978 memo to H. Thornburg, Region IV personnel know of no instances wherein a Utility performed, or authorized, an action detrimental to public health and safety for the purpose of reducing expenditures.

A handwritten signature in cursive script, reading "W. E. Vetter", is positioned above the typed name and title.

W. E. Vetter
Assistant to the Director

cc: Karl V. Seyfrit, RIV
G. L. Madsen, RIV
W. C. Seidle, RIV

Enclosure 4



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W.
ATLANTA, GEORGIA 30303

November 29, 1978

SSINS 6010

MEMORANDUM FOR: R. F. Heishman, Chief, Reactor Construction & Engineering
Support Branch, Region III

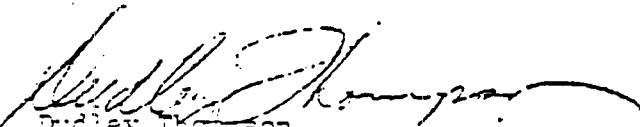
FROM: Dudley Thompson, Deputy Director

SUBJECT: REQUEST FOR FINANCIAL INFORMATION BY D. SKOVHOLT
(AITS H10284H3)

This is in response to Reinmuth's memorandum to you, subject as above,
dated November 7, 1978.

We have surveyed the appropriate staff and reviewed the records of licensees and permittees in Region II. Our review has disclosed no instances "in which a utility performed or authorized an action detrimental to public health and safety for the purpose of reducing expenditures". As noted in Skovholt's memorandum, we are aware of the prudent fiscal management by most utilities. In no instance however were we able to discern actions by utilities that meet the criteria set forth by Skovholt.

I understand that Al Herdt previously discussed this matter with you by telephone for construction permit holders. This memorandum constitutes response not only for RCESB but also for RONSBB.


Dudley Thompson
Deputy Director

Enclosure 4

ENCLOSURE 5

ENCLOSURE 5

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 50]

FINANCIAL QUALIFICATIONS

LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

AGENCY: U. S. Nuclear Regulatory Commission

ACTION: Proposed Rule

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations to (1) establish criteria that constitute conclusive evidence of an applicant's financial qualifications to pursue activities under a Part 50 construction permit or operating license; (2) eliminate the requirement for a financial qualifications finding on applicants that would own an insignificant financial interest in a facility; (3) require applicants for research reactor operating licenses, or renewals thereof, to demonstrate reasonable assurance of obtaining the funds to permanently shut down the reactor and maintain it in a safe condition; and (4) clarify the information requirements on applicants and staff review practices.

DATES: Comment period expires _____.*

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposal and/or the supporting value/impact analysis to

_____ 60 days from publication in Federal Register.

the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch. Single copies of the value/impact analysis may be obtained on request from Donald J. Skovholt, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555 (Phone: 301-492-7492). Copies of the value/impact analysis and of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street, N. W., Washington, D. C.

FOR FURTHER INFORMATION CONTACT: Donald J. Skovholt, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555 (Phone: 301-492-7492)

SUPPLEMENTARY INFORMATION: In its decision in Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2) 7 NRC 1, CLI-78-1 (1978) (hereinafter, "the Commission's Seabrook decision"), the Commission directed (at page 20) the staff "to initiate a rulemaking proceeding in which the factual, legal, and policy aspects of the financial qualifications issue may be reexamined." Specifically, the staff was to examine the relationship between the financial qualifications of Part 50 applicants and licensees and their ability to safely construct and operate production and utilization facilities. Further, the staff was to prepare a proposed rule that would amend existing financial qualifications requirements if the staff's study indicated this to be appropriate.

On May 25, 1978, the staff notified the public (43 FR 22373) of the Commission's order for a study of the generic financial qualifications issue. The staff requested interested members of the public to submit comments on the issue and to propose specific changes to the rules. Comments were requested to be submitted by July 24, 1978. In response to the notice, seven sets of comments were received. Six of the submittals were from electric utilities, the Edison Electric Institute (EEI) or law firms representing electric utilities. The seventh set of comments was from the National Consumer Law Center, Inc. The staff has prepared a detailed analysis of these comments which may be examined in the Commission's Public Document Room at 1717 H Street, N. W. Washington, D. C. The following is a summary of the comments.

The utilities, the EEI and the law firms recommended that the regulations be revised to substantially reduce the scope of NRC's financial qualifications review especially as it applies to applicants whose rates for service are either self-determined or are determined by state and/or federal regulatory agencies. These commenters generally maintained that a history of successful plant construction and operation coupled with the legal requirements placed on economic regulators together constitute "reasonable assurance" that adequate financing can be obtained. This group of commenters further argued that "cutting-corners" in construction or operation is not in the self-interest of the utility. It is imperative that a plant provide long-term operation reliably and safely in accordance with NRC regulations. The commenters

said that the financial savings that could be achieved through "corner-cutting" would be small compared to the sums required to complete the project. The risk of detection by NRC inspectors and possible resulting legal action against the utility serve as additional disincentives to violations of NRC's regulations.

One of the above commenters expressed a preference for complete elimination of the financial qualifications finding as now required by the regulations. The commenter maintained that a causal relationship between financial qualifications and safety had not been demonstrated.

One of the utility commenters, while endorsing its law firm's comments which are among those summarized above, raised a consideration regarding the sources of funds statement that the NRC staff routinely requires of construction permit applicants. The sources of funds statement, while not considered a forecast of what will necessarily occur, is a demonstration by the utility applicant of one method by which it might reasonably finance its overall construction program including the nuclear power plant. The commenter maintained that such projections, if published, (1) could mislead the investing public, possibly leading to liability for the company; and (2) may constitute a violation of federal securities laws. The NRC staff has requested and received the sources of funds statement from a large number of construction permit applicants over the past four years. A very few of these applicants have requested proprietary treatment of their sources of funds statements using rationale similar to that above. These requests have not been approved. The NRC staff is not aware of any cases

of liability accruing to applicants because of the publication of such sources of funds statements. In the past three years, the NRC staff has twice inquired of the Securities and Exchange Commission (SEC) staff regarding the question of possible federal securities law violations. Both SEC replies indicate that the submission of such sources of funds statements by applicants to the NRC and subsequent release of the statements to the public do not contravene SEC requirements. The second and most recent SEC reply is dated December 14, 1978, which is subsequent to the above commenter's submission dated July 21, 1978.

The National Consumer Law Center, Inc. (NCLC) commented that the existing regulation is inadequate in that it does not require the filing of sufficient financial information to demonstrate financial qualifications for a construction permit or an operating license. NCLC provided a detailed list of the types of financial information that should be required of applicants. Most of the suggested information is currently required by the NRC staff in its financial reviews. While much of this data is not specifically referred to in the regulations, the NRC staff regularly obtains it from applicants under NRC's authority to require additional pertinent information. NCLC based its suggestion for NRC requiring such information on the holding that safe, reliable construction and operation of nuclear facilities is contingent upon the financial qualifications of the applicant. It stated that insufficient financing during construction could lead to the use of substandard materials and to costly delays in construction. NCLC further suggested that NRC should

promulgate a regulation requiring that nuclear facilities be constructed with a reasonable cost of financing and that failing to do so may financially burden the applicant and the applicant's owners and customers.

The NRC staff's study of the generic financial qualifications issue included the following elements: consideration of the public comments solicited on the matter; review and analysis of the Commission's Seabrook decision which included the Commission's own review of the issue as well as its Order for this study; review and analysis of other NRC and Atomic Energy Commission licensing cases which have involved financial qualifications; and analysis of regulatory experience during the two decades of power reactor construction and operation. The staff also considered the relevant regulatory initiatives that have been adopted subsequent to the enactment of the Atomic Energy Act of 1954 that contained the financial qualifications requirement. These initiatives include the establishment of comprehensive quality assurance requirements on licensees, the establishment of civil penalties as enforcement vehicles, the promulgation of 10 CFR 21, "Reporting of Defects and Non-compliance," and the initiation of the program for NRC resident inspectors at reactor sites. Each of these measures provides additional assurances regarding proper construction and operation and, thereby, serves to reduce the safety dependence on financial qualifications.

The Commission has concluded, however, that although technical reviews and inspection efforts are very effective direct methods of discovering deficiencies that could affect safety, the analysis of financial qualifications is an additional method, albeit indirect, of determining an applicant's

Enclosure 5

ability to satisfy safety requirements. The financial qualifications review is one element in the Commission's system of multiple and redundant safety reviews and inspections. The purpose of the financial qualifications review in this system is analogous to the overlapping protective echelons of the "defense-in-depth" approach used in designing nuclear power plants.

The Commission has also concluded that the scope of the financial qualifications review can appropriately be reduced for applicants in good financial condition whose rates for service are either regulated or self-determined and for those applicants that have insignificant ownership interests in facilities. The Commission will retain the prerogative to increase the scope of its review in response to a financially-troubled applicant or licensee or in response to significant adverse economic developments. The Commission will also retain its current scope of review for those applicants not enjoying regulated status and not having authority to set their own rates.

The value of the proposed rule will be that the level of effort by applicants, licensees, the staff and NRC adjudicatory boards will appropriately reflect the relationship between financial qualifications and safety. In cases where financial qualifications is a potential safety issue, the staff will conduct a detailed review; in cases where it is not, the staff's review will be minimal. The proposed rule aims at eliminating extensive reviews in cases where the applicant is clearly qualified to finance activities under the proposed permit or license. Under the existing rule, applicants in good financial condition and clearly financially qualified have been subject to

extensive reviews and time-consuming litigation. The proposed rule will sharply lessen the chance of that happening. On the other hand, an applicant or licensee that is experiencing significant financial difficulties or that is in a marginal financial condition will be subject to a full-scale review.

It is noted that the Commission is now considering development of more explicit overall policy for nuclear facility decommissioning (including financial assurance related to the cost of decommissioning) and amending its regulations in 10 CFR Parts 30, 40, 50 and 70 to include more specific guidance on decommissioning criteria for production and utilization facility licensees and byproduct, source and special nuclear material licensees. Since the generic decommissioning study has not yet been completed, the rule change proposed herein does not reflect results of that study.

In summary, the Commission has concluded that adoption of the proposed rule will result in a substantial reduction in the impact, or burden, accompanying the requirement for a demonstration of financial qualifications with no reduction in the value, to safety, that the requirement provides. The Commission's Value/Impact Analysis of the proposed rule is available for public inspection as noted above.

10 CFR 50.33(f) and Appendix C to 10 CFR 50 are revised to read as follows. A new paragraph (q) is added to 10 CFR 50.54 as follows.

ENCLOSURE 5

10 CFR 50.33 (f)

Each application shall state:

- (f) Information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought. Appendix C to this Part specifies certain circumstances in which an applicant for an "insignificant financial interest" in a facility is normally not required to submit the financial information addressed in this section and in the appendix to the Commission.
- (1) If the application is for a construction permit, such information shall demonstrate that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs. The applicant shall submit estimates of the total construction cost of the facility and related fuel cycle costs and shall indicate the source of funds to cover such costs.
- (2) If the application is for an operating license, such information shall demonstrate that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, plus the estimated

costs of permanently shutting the facility down and maintaining it in a safe condition. The applicant shall submit estimates of total annual operating costs for each of the first five years of operation of the facility and estimates of the costs to permanently shut down the facility and maintain it in a safe condition. The applicant shall also indicate the sources of funds to cover such costs. An application to renew or extend the term of an operating license shall include the same financial information as required in an application for an initial license.

Without limitation on the generality of the foregoing requirements, each application for a construction permit, or an operating license submitted by a newly formed entity organized for the primary purpose of constructing or operating a facility shall include information showing the legal and financial relationships it has or proposes to have with its stockholders or owners, and their financial ability to meet any contractual obligation to such entity which they have incurred or propose to incur, and any other information deemed necessary by the Commission to enable it to determine the applicant's financial qualifications.

Appendix C to this Part states in greater detail the financial data and other related information to be submitted by applicants for licenses to construct and operate production or utilization facilities of the types described in Section 50.21(b) or Section 50.22, or a testing facility. The appendix sets forth certain financial criteria

that, when satisfied by such an applicant, demonstrate conclusive evidence of financial qualifications. An applicant that satisfies the specified criteria is financially qualified under the Commission's regulations to pursue the activities for which the permit or license is sought. An applicant that does not satisfy the specified criteria will provide additional information at the Commission's request to demonstrate its financial qualifications. Further inquiry and adjudication of an applicant's or a licensee's financial qualifications is foreclosed after the Commission has determined that conclusive evidence of financial qualifications has been demonstrated. An exception to this is the case of an applicant or a licensee, previously found financially qualified through the criteria that demonstrate conclusive evidence, that no longer satisfies either one or both of the specified criteria.

10 CFR 50.54(q)

Whether stated therein or not, the following shall be deemed conditions in every license issued:

- (q) If the licensee had previously been found financially qualified by satisfying the criteria that demonstrate conclusive evidence, it shall promptly report to the Commission when it no longer satisfies either one or both of the financial criteria specified in Appendix C.

TABLE OF CONTENTS

Appendix C, 10 CFR 50 - A GUIDE FOR THE FINANCIAL DATA AND RELATED INFORMATION
REQUIRED TO DEMONSTRATE FINANCIAL QUALIFICATIONS FOR FACILITY CONSTRUCTION
PERMITS AND OPERATING LICENSES

- I. General Information.
- II. Applicants Which Are Established Entities.
 - A. Applications for construction permits.
 - 1. Estimate of construction costs.
 - 2. Sources of construction funds.
 - 3. Applicant's financial statements.
 - 4. Conclusive evidence of financial qualifications.
Reporting adverse changes to the Commission.
 - 5. Alternative demonstration of financial qualifications.
 - B. Applications for operating licenses.
 - 1. Estimate of operating costs and sources of funds.
 - 2. Applicant's financial statements.
 - 3. Conclusive evidence of financial qualifications.
Reporting adverse changes to the Commission.
 - 4. Alternative demonstration of financial qualifications.
 - C. Applications by joint applicants.
- III. Applicants Which Are Newly Formed Entities.
 - A. Applications for construction permits.
 - 1. Estimate of construction costs.
 - 2. Sources of construction funds.
 - 3. Applicant's financial statements.
 - B. Applications for operating licenses.
 - 1. Estimates of operating revenues and expenses.
 - 2. Applicant's financial statements.
- IV. Transfers of Ownership Interests.
- V. Insignificant Financial Interests.
- VI. Annual Financial Statements - Reporting Requirement.
- VII. Additional Information.

I. GENERAL INFORMATION

This appendix is intended to apprise applicants for licenses to construct and operate production or utilization facilities of the types described in Section 50.21(b) or Section 50.22, or a testing facility, of the financial data and other related information that will demonstrate the financial qualifications of the applicant to carry out the activities for which the permit or license is sought. The provisions of this appendix are in accordance with the requirements of Section 50.33(f) of this Part. The appendix sets forth certain financial criteria that, when satisfied by an applicant, demonstrate conclusive evidence of financial qualifications. An applicant that satisfies the specified criteria is financially qualified under the Commission's regulations to pursue the activities for which the permit or license is sought. An applicant that does not satisfy the specified criteria will provide additional information at the Commission's request to demonstrate its financial qualifications. Further inquiry and adjudication of an applicant's or a licensee's financial qualifications is foreclosed after the Commission has determined that conclusive evidence of financial qualifications has been demonstrated. An exception to this is the case of an applicant or a licensee, previously found financially qualified through the criteria that demonstrate conclusive evidence, that no longer satisfies either one or both of the specified criteria.

Item V of this appendix specifies certain circumstances in which an applicant for an "insignificant financial interest" in a facility is normally not required to submit the financial information addressed in Section 50.33(f) of this Part and in this appendix to the Commission.

Since separate findings of financial qualifications will be made by the Commission at the construction permit stage of the licensing process and at the operating license stage, the nature of the information to be included in the application at each of these stages is discussed separately.

It is important to observe also that both Section 50.33(f) and this appendix distinguish between applicants which are established entities and those which are newly formed entities organized primarily for the purpose of engaging in the activity for which the permit or license is sought. Those in the former category will normally have a history of operating experience and be able to submit data reflecting the financial results of past operations. With respect to the applicant which is a newly formed company established primarily for the purpose of carrying out the licensed activity, with little or no prior operating history, somewhat more detailed data and supporting documentation will generally be necessary. For this reason, the appendix describes separately the scope of information to be included in applications by each of these two classes of applicants.

The data specified in this guide will generally be sufficient for the Commission to determine an applicant's financial qualifications for a construction permit or an operating license. However, the Commission reserves the right to require additional financial information prior to construction or during construction or operation of the facility. This is particularly true in cases of significant adverse changes in the financial condition of an applicant or licensee or in response to significant adverse economic developments.

Applicants, permit holders and licensees are encouraged to consult with the Commission with respect to any questions they may have relating to the requirements of the Commission's regulations or the information set forth in this appendix.

II. APPLICANTS WHICH ARE ESTABLISHED ENTITIES

A. Applications for construction permits -

1. Estimate of construction costs. For electric utilities, each applicant's estimate of the total cost of each unit of the proposed facility should be broken down as follows and be accompanied by a statement describing the bases from which the estimate is derived:

- (a) Total nuclear production plant
costs \$ _____
- (b) Transmission, distribution and
general plant costs \$ _____
- (c) Nuclear fuel inventory cost for
first core. \$ _____
- Total Estimated Cost . . . \$ _____

If the fuel is to be acquired by lease or other arrangement than purchase, the application should so state. The items to be included in these categories should be the same as those defined in the applicable electric plant and nuclear fuel inventory accounts stated in the Uniform System of Accounts of the Federal Energy

Regulatory Commission or an explanation given as to any departures therefrom.

Since the composition of construction cost estimates for production and utilization facilities other than nuclear power reactors will vary according to the type of facility, no particular format is suggested for submitting such estimates. The estimate should, however, be itemized by categories of cost in sufficient detail to permit an evaluation of its reasonableness.

2. Sources of construction funds. The application shall include a brief statement of the applicant's general financial plan for financing the cost of the facility, identifying the source or sources upon which the applicant will rely for the necessary construction funds, e.g., internal sources such as retained earnings and depreciation accruals or external sources such as issuance of debt and equity securities. The application shall indicate the relative degree to which each source of funds is expected to contribute to the total required funds. The projected overall capital structure of the applicant during construction of the facility shall also be indicated.

A publicly-owned applicant shall submit excerpts from statutes, ordinances or other legal authority that allow it to issue bonds or other forms of indebtedness and to take other actions necessary to finance the facility.

3. Applicant's financial statements. The application shall also include the applicant's latest published annual financial report, together with its most recent interim financial statements. If such a report is not published, the balance sheet and operating statement covering the latest complete accounting year together with all pertinent notes thereto and certification by a public accountant shall be furnished.
4. Conclusive evidence of financial qualifications. An applicant that satisfies the following two criteria is financially qualified under the Commission's regulations governing the issuance of construction permits. In addition to providing the information specified above, each applicant shall state in its application information sufficient to demonstrate how it does or does not satisfy each of the following two criteria:
 - (a) The applicant's rates for service are determined by state and/or federal regulatory agencies or by the applicant itself. For this purpose, the applicant's rates shall be considered to be self-determined if its rates are established either directly for itself or by its controlling governmental unit (e.g., by the city council for its municipal utility); and
 - (b) The applicant's most senior long-term debt is rated "A" or higher by both of the major securities rating services (Moody's Investors Service, Inc., and Standard and Poor's Corporation).

(An applicant whose long-term debt is guaranteed by the United States, or an agency thereof, shall be deemed to have satisfied this criterion. Such an applicant shall submit copies of a loan commitment notice for debt that will finance construction of the facility.)

Reporting adverse changes to the Commission.

If at any time after submitting its construction permit application and before an operating license is issued, an applicant (that had previously been found financially qualified by satisfying the criteria that demonstrate conclusive evidence) no longer satisfies one or both of the above criteria, it shall promptly report the circumstances and reasons therefore to the Commission.

5. Alternative demonstration of financial qualifications.

An applicant that does not satisfy either one or both of the above criteria of conclusive evidence will provide additional financial information at the Commission's request. The information will enable the Commission to analyze the applicant's financial qualifications in greater detail and to determine if the applicant is financially qualified to pursue activities under the proposed permit.

B. Applications for operating licenses -

1. Estimate of operating costs and sources of funds. During the review of an application for an operating license, the applicant will provide, at the Commission's request, current estimates of

the total annual cost to operate the facility for each of the first five years of operation and estimates of the costs to permanently shut down the facility and maintain it in a safe condition. The applicant will also describe the sources of funds to cover operating costs and shutdown and maintenance costs.

2. Applicant's financial statements. The application shall include the applicant's latest published annual financial report, together with its most recent interim financial statements. If such a report is not published, the balance sheet and operating statement covering the latest complete accounting year together with all pertinent notes thereto and certification by a public accountant shall be furnished.
3. Conclusive evidence of financial qualifications. An applicant that satisfies the following criterion is financially qualified under the Commission's regulations governing the issuance of operating licenses. Each applicant shall state in its application information sufficient to demonstrate how it does or does not satisfy the following criterion:

The applicant's rates for service are determined by state and/or federal regulatory agencies or by the applicant itself. For this purpose, the applicant's rates shall be considered to be self-determined if its rates are established either directly for itself or by its controlling governmental unit (e.g., by the city council for its municipal utility).

Reporting adverse changes to the Commission.

If at any time after submitting its application or while the facility is licensed, an applicant or licensee (that had previously been found financially qualified by satisfying the criterion that demonstrates conclusive evidence) no longer satisfies the above criterion, it shall promptly report the circumstances and reasons therefore to the Commission.

4. Alternative demonstration of financial qualifications.

An applicant that does not satisfy the above criterion of conclusive evidence will provide additional financial information at the Commission's request. The information will enable the Commission to analyze the applicant's financial qualifications in greater detail and to determine if the applicant is financially qualified to pursue activities under the proposed license.

C. Applications by joint applicants -

Joint applicants are a group of established entities that have agreed to apply for and to pursue activities under a construction permit or operating license. Each joint applicant is individually subject to all of the above requirements for established entities. In addition to providing the Commission with the information required for established entities, joint applicants shall submit copies of their joint ownership and operation agreement (or similar agreement or contract) that outlines the financial responsibilities of the parties.

Joint applicants are differentiated from a newly formed entity in that the latter does not have a significant operating history that can be analyzed from the financial qualifications standpoint. The requirements for newly formed entities are covered in III, below.

III. APPLICANTS WHICH ARE NEWLY FORMED ENTITIES

A. Applications for construction permits -

1. Estimate of construction costs. The information that is normally required of applicants which are newly formed entities does not differ in scope from that required of established entities. Accordingly, applicants shall submit construction cost estimates as described above for established entities.
2. Sources of construction funds. The application shall specifically identify the source or sources upon which the applicant will rely for the funds necessary to pay the cost of constructing the facility, and the amount to be obtained from each. With respect to each source, the application shall describe in detail the applicant's legal and financial relationships with its stockholders, corporate affiliates, or others (such as financial institutions) upon which the applicant is relying for financial assistance. If the sources of funds relied upon include parent companies or other corporate affiliates, information to support the financial capability of each such company or affiliate to meet its commitments to the applicant shall be set forth in the application. This information shall

be of the same kind and scope as would be required if the parent companies or affiliates were in fact the applicant.

The established entities comprising the newly formed entity shall submit copies of their joint ownership and operation agreement (or similar agreement or contract) that outlines the financial responsibilities of the parties.

3. Applicant's financial statements.

As noted earlier in this appendix, an applicant which is a newly formed entity will normally not be in a position to submit the usual types of balance sheets and income statements reflecting the results of prior operations. The applicant shall, however, include in its application a statement of its assets, liabilities and capital structure as of the date of the application.

B. Applications for operating licenses-

1. Estimates of operating revenues and expenses. During the review of an application for an operating license, the applicant will provide, at the Commission's request, current estimates of the facility's annual operating revenues and operating expenses for each of the first five years of operation. The statement should list operating revenues and expenses in sufficient detail to permit an assessment of the reasonableness of the estimates. The expected source of operating revenues shall be

indicated. In addition, the applicant shall include its estimate of costs and indicate the source of funds to permanently shut down the facility and maintain it in a safe condition.

2. Applicant's financial statements. In its application for a license to operate the facility, the applicant shall include a statement of its assets, liabilities and capital structure as of the date of the application.

IV. TRANSFERS OF OWNERSHIP INTERESTS

A transfer of ownership interest in a licensed facility requires prior Commission approval by amendment to the permit or license. (See Section 50.10.) The financial information required by the Commission for its review of a proposed ownership transfer is the same type of information required for an initial permit or license. Accordingly, a proposed new owner or an owner seeking an increased ownership share in a licensed facility is subject to the requirements of this appendix and Section 50.33(f). The provisions for insignificant financial interests in V, below, are an exception to these requirements.

V. INSIGNIFICANT FINANCIAL INTERESTS

An ownership interest of less than five percent in a facility by any one applicant is considered insignificant from the financial qualifications standpoint. (With respect to a nuclear power plant, "facility" means each nuclear unit.) Accordingly, the Commission generally does not review and no finding is necessary on the financial qualifications of an applicant for less than a five percent ownership interest in a facility.

Likewise, the applicant for such an interest is normally not required to submit the financial information specified in Section 50.33(f) of this Part and in this appendix. (Such an applicant is required to file its annual financial report with the Commission in accordance with VI, below, and Section 50.71(b).) However, the Commission may elect to review such an interest if it appears that extenuating circumstances may be present. For example, such an interest would be subject to the financial qualifications review if the interest appears to represent a significant level of control over the construction or operation of the facility.

Likewise, an application for a license amendment involving less than a five percent increase in ownership interest by any one applicant is not subject to the financial qualifications review. However, such an applicant is subject to the financial qualifications review if its proposed total ownership in the facility is greater than five percent and the applicant has not previously been subject to the financial qualifications review with respect to that facility.

These provisions for insignificant financial interests do not affect other provisions in this Chapter for licensing of an ownership interest or for prior approval by the Commission of transfers of ownership interests.

VI. ANNUAL FINANCIAL STATEMENTS - REPORTING REQUIREMENT

Each licensee and each holder of a construction permit for a production or utilization facility of a type described in Section 50.21(b) or

Section 50.22, or a testing facility is required by Section 50.71(b) to file its annual financial report with the Commission at the time of issuance thereof. This requirement does not apply to licensees or holders of construction permits for medical and research reactors.

VII. ADDITIONAL INFORMATION

The Commission may, from time to time, request the applicant or licensee, whether an established entity or newly formed entity, to submit additional or more detailed information respecting its financial arrangements and status of funds if such information is deemed necessary to enable the Commission to determine the applicant's financial qualifications for the permit or license or a licensee's financial qualifications to continue the conduct of the activities authorized by the license and to permanently shut down the facility and maintain it in a safe condition.

ENCLOSURE 6

ENCLOSURE 6
ANALYSIS OF PROPOSED REGULATION -
CHANGES TO CURRENT REQUIREMENTS

(Note: all references are to proposed regulations)

1. Conclusive evidence of financial qualifications [10 CFR 50.33(f);
Appendix C, II.A.4., and II.B.3.]

The most fundamental change to the current regulation would be the use of specified criteria to demonstrate conclusive evidence of financial qualifications by applicants. An applicant (1) whose rates for service are determined by state and/or federal regulatory agencies (or are self-determined), and (2) whose most senior long-term debt is rated "A" by both of the major securities rating services would be deemed financially qualified for a construction permit. The "A" rating is the third highest rating and is assigned to upper medium grade obligations. "A"-rated bonds are considered "investment grade" and are acceptable to a wide range of purchasers. They are legal for purchase by most institutions; however, certain investors such as trust funds may establish higher standards. An applicant whose long-term debt is guaranteed by the United States, or an agency thereof, would be deemed to have satisfied the second criterion. Such an applicant would be required to submit copies of a loan commitment notice for debt that would finance construction of the facility. An applicant that satisfies the first criterion (rate-setting) would be deemed financially qualified for an operating license.

The staff is proposing the use of bond ratings by the two major securities rating firms (Moody's Investors Service, Inc., and Standard and Poor's

Corporation). These two firms have been highly respected by industry, investors and government for many years, both for their independence and for the depth and quality of the analyses underlying the ratings. The rating is a measure of how well interest payments and principal will be protected over a considerable time span into the future, that is, the creditworthiness of the company's various issues. The analyses underlying the rating include indepth reviews of many aspects of the company's past, present and expected future financial condition. An important part of the review which affects the rating is the magnitude of the company's proposed construction program and its anticipated effect on the company's financial condition. The rating services also analyze the company's proposed construction program in relation to the projected need for power in the company's service area. For the above reasons, the staff has concluded that bond ratings can be objectively applied to the financial qualifications review and used as one criterion for demonstrating conclusive evidence of financial qualifications.

Applicants satisfying the specified criteria for either a construction permit or an operating license would not be subject to extensive financial qualifications reviews by the staff. Further inquiry and adjudication of an applicant's or a licensee's financial qualifications would be foreclosed after the Commission determines that conclusive evidence of financial qualifications has been demonstrated. An exception to this would be the case of an applicant or a licensee, previously found financially qualified through the criteria that demonstrate conclusive evidence, that no longer satisfies either one or both of the specified

criteria. The staff estimates that under current economic and financial conditions the majority of current utility applicants and licensees under Part 50 would satisfy these criteria that constitute conclusive evidence of financial qualifications. Accordingly, the scope of the staff's review of such applicants' financial qualifications would be substantially reduced from the current scope.

The proposed regulation also requires an applicant or a licensee that had previously been found financially qualified by satisfying the criteria that demonstrate conclusive evidence to promptly report to the Commission if and when it no longer satisfies one or both of the specified criteria. [10 CFR 50.54(q); Appendix C, II.A.4. and II.B.3.]

An applicant that does not satisfy the criteria of conclusive evidence will demonstrate its financial qualifications by providing additional more detailed information at the Commission's request. The additional information will enable the Commission to analyze the applicant's financial qualifications in greater detail and to determine if the applicant is financially qualified to pursue activities under the proposed permit or license. (Appendix C, II.A.5. and II.B.4.)

2. Insignificant Financial Interests (Appendix C, V.)

The staff has concluded that an ownership interest of less than five percent in a facility by any one applicant should generally be considered insignificant from the financial qualifications standpoint. No safety issue is involved because an owner of less than five percent

of a facility normally has no significant control over the construction or operation of the facility. An owner that is applying for an increase in ownership interest of less than five percent will have already been found financially qualified to participate in the facility if that owner has previously owned five percent or more of the facility or if its proposed total ownership in the facility is five percent or greater. NRC would reserve the right under the proposed rule to review an ownership interest of less than five percent if it appears that extenuating circumstances (such as a significant level of control) may be present.

The staff has surveyed all existing applicants and licensees and has not found any cases in which the composite ownership percentage of all "insignificant financial interests" (less than five percent per owner) in a single facility equals or even closely approaches a majority ownership of the facility. Thus, the majority owner(s) of the facility would be subject to all requirements of the financial qualifications review.

3. Decommissioning Costs and Source of Funds [10 CFR 50.33(f)(2); Appendix C, II.B. and III.B.]

Applicants for research reactor operating licenses (as well as all other Part 50 facilities), or renewals thereof, would be required to demonstrate reasonable assurance of obtaining the funds to permanently shut down the reactor and maintain it in a safe condition (decommissioning). The existing requirement applies only to commercial, industrial and testing facilities. The components of a research reactor would be highly radioactive if it had been operated at a high power level for a number of years. The cost

of decommissioning such a facility could be substantial, especially if it were to be dismantled.

The Commission is now considering development of more explicit overall policy for nuclear facility decommissioning and amending its regulations in 10 CFR Parts 30, 40, 50 and 70 to include more specific guidance on decommissioning criteria for production and utilization facility licensees and byproduct, source and special nuclear material licensees. In December 1978, NUREG-0436, Revision 1, "Plan for Reevaluation of NRC Policy on Decommissioning of Nuclear Facilities," was published. The plan includes a review of financial assurance relating to the cost of decommissioning a nuclear facility at the end of its useful life. Since the generic decommissioning study has not yet been completed, the rule change proposed in this policy paper does not reflect results of that study.

4. Transfers of Ownership Interests (Appendix C, IV.)

The proposed rule highlights NRC's existing requirement under the provisions of 10 CFR 50.10 that a transfer of ownership interest in a licensed facility must have prior Commission approval by amendment to the permit or license.

5. Renewals of Operating Licenses [10 CFR 50.33(f)(2)]

Existing policy is clarified in that an application to renew or extend the term of an operating license shall include the same financial information as required in an application for an initial license.

ENCLOSURE 7

ENCLOSURE 7

VALUE/IMPACT ANALYSIS

PROPOSED RULE CHANGE - FINANCIAL QUALIFICATIONS

10 CFR 50.33(f); 50.54(q); Appendix C, 10 CFR 50

A. NEED FOR THE CHANGE

The NRC staff has completed a comprehensive study of the financial qualifications requirements that apply to Part 50 applicants and licensees. The staff has examined and more clearly defined the relationship between financial qualifications and safety. As a result, the staff has concluded that the scope of the financial qualifications review is excessive for a significant portion of NRC's utility applicants. Accordingly, the proposed rule would establish criteria that, if satisfied by a utility applicant, would demonstrate conclusive evidence of financial qualifications. An applicant that demonstrates such conclusive evidence would not be subject to a more extensive financial qualifications review as at present.

B. VALUE/IMPACT ON APPLICANTS, LICENSEES AND NRC

Utilities would be the only type of applicant to be significantly impacted by the rule change because rate-setting authority would be a criterion of conclusive evidence for both construction permits and operating licenses. The level of reduced impact will be determined specifically by utilities' financial condition as evidenced by their bond ratings. The staff estimates that under current economic and financial conditions that the majority of current Part 50 utility applicants

and licensees would satisfy criteria that constitute conclusive evidence of financial qualifications. The level of effort and amount of information to be supplied by a utility applicant that meets the specified criteria would be significantly reduced from the present requirement. The level of staff effort would be correspondingly reduced.

Adverse economic developments affecting the financial condition of the utility industry could result in fewer applicants and licensees satisfying the criteria and an increased scope of effort for those applicants, licensees and the staff. Improved economic and financial conditions could have the opposite effect. The degree of change in effort by applicants, licensees and the staff would depend on the significance or severity of the economic and financial developments and the corresponding effects on bond ratings.

Since the current financial qualifications requirements are considered to be the most stringent requirements that are rational, it is anticipated that the level of effort for an applicant or licensee would never exceed the current level, even under significant adverse economic conditions. The staff's overall level of effort during any one period will be determined in large part by the financial condition of individual applicants and licensees and the extent to which they demonstrate conclusive evidence of financial qualifications. It is noted that under both the existing and proposed rules, that the staff monitors the financial condition of NRC licensees. The staff's sources of information include annual financial

reports filed by holders of construction permits and by licensees in accordance with 10 CFR 50.71(b) and data reported by a number of financial publishing firms.

The proposed rule would also impact on the level of effort expended by licensing and appeal boards in adjudicating the financial qualifications issue. Since utilities have been the applicants in most cases where financial qualifications has been a contested issue, it follows that the financial condition of utility applicants and licensees would directly affect the effort expended by the boards. If an applicant demonstrates conclusive evidence of financial qualifications, the only contestable element would be the adequacy of the applicant's demonstration that it meets the criteria; an exhaustive inquiry of financial qualifications would not be necessary.

The value of the proposed rule would be that the level of effort by applicants, licensees, the staff and NRC adjudicatory boards would appropriately reflect the relationship between financial qualifications and safety. In cases where financial qualifications is a potential safety issue, the staff would conduct a detailed review; in cases where it is not, the staff's review would be minimal. The proposed rule aims at eliminating extensive reviews in cases where the applicant is clearly qualified to finance activities under the proposed permit or license. Under the existing rule, applicants in good financial condition and clearly financially qualified have been subjected to extensive reviews and time-consuming litigation. The proposed rule would sharply lessen

the chance of that happening. On the other hand, an applicant or licensee that is experiencing significant financial difficulties or that is in a marginal financial condition would be subject to a full-scale review.

In summary, the staff believes that adoption of the proposed rule would result in a substantial reduction in the impact, or burden, accompanying the requirement for a demonstration of financial qualifications with no reduction in the value, to safety, that the requirement provides.

ENCLOSURE 8

ENCLOSURE 8

COMPARATIVE TEXT - PROPOSED REGULATION

10 CFR 50.33(f)

Each application shall state:

- (f) Information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought. Appendix C to this Part specifies certain circumstances in which an applicant for an "insignificant financial interest" in a facility is normally not required to submit the financial information addressed in this section and in the appendix to the Commission.
- (1) If the application is for a construction permit, such information shall ~~[show]~~ demonstrate that the applicant possesses ~~[the-funds necessary-to-cover-estimated-construction-costs-and-related-fuel cycle-costs-or-that-the-applicant-has-reasonable-assurance-of-obtaining-the-necessary-funds,-or-a-combination-of-the-two-]~~ or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs. The applicant shall submit estimates of the total construction cost of the facility and related fuel cycle costs and shall indicate the source of funds to cover such costs.
- (2) ~~[With-respect-to-any-production-or-utilization-facility-of-a-type described-in-Section-50.21(b)-or-Section-50.22,-or-a-testing~~

~~facility, the following specific requirements shall apply.~~

If the application is for an operating license, such information shall ~~[show]~~ demonstrate that the applicant possesses ~~[the funds necessary to cover estimated operating costs or that the applicant has reasonable assurance of obtaining the necessary funds, or a combination of the two]~~ or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, [or for five years, whichever is greater], plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition. The applicant shall submit estimates of total annual operating costs for each of the first five years of operation of the facility and estimates of the costs to permanently shut down the facility and maintain it in a safe condition. The applicant shall also indicate the sources of funds to cover such costs. An application to renew or extend the term of an operating license shall include the same financial information as required in an application for an initial license.

Without limitation on the generality of the foregoing requirements, each application for a construction permit, or an operating license submitted by ~~[an]~~ a newly formed entity organized for the primary purpose of constructing or operating a facility shall include information showing the legal and financial relationships it has or proposes to have with its stockholders or owners, and their financial ability to meet any contractual obligation to such entity which they have incurred or propose to incur,

and any other information deemed necessary [~~to-enable~~] by the Commission to enable it to determine the applicant's financial qualifications.

Appendix C to this Part states in greater detail the financial data and other related information to be submitted by applicants for licenses to construct and operate production or utilization facilities of the types described in Section 50.21(b) or Section 50.22, or a testing facility. The appendix sets forth certain financial criteria that, when satisfied by such an applicant, demonstrate conclusive evidence of financial qualifications. An applicant that satisfies the specified criteria is financially qualified under the Commission's regulations to pursue the activities for which the permit or license is sought. An applicant that does not satisfy the specified criteria will provide additional information at the Commission's request to demonstrate its financial qualifications. Further inquiry and adjudication of an applicant's or a licensee's financial qualifications is foreclosed after the Commission has determined that conclusive evidence of financial qualifications has been demonstrated. An exception to this is the case of an applicant or a licensee, previously found financially qualified through the criteria that demonstrate conclusive evidence, that no longer satisfies either one or both of the specified criteria.

10 CFR 50.54 (q)

Whether stated therein or not, the following shall be deemed conditions in every license issued:

(q) If the licensee had previously been found financially qualified by satisfying the criteria that demonstrate conclusive evidence, it shall promptly report to the Commission when it no longer satisfies either one or both of the financial criteria specified in Appendix C.

(NOTE: Entire Table of Contents is new.)

- 5 -

TABLE OF CONTENTS

Appendix C, 10 CFR 50 - A GUIDE FOR THE FINANCIAL DATA AND RELATED INFORMATION
REQUIRED TO [ESTABLISH] DEMONSTRATE FINANCIAL QUALIFICATIONS FOR FACILITY
CONSTRUCTION PERMITS AND OPERATING LICENSES

- I. General Information.
- II. Applicants Which Are Established Entities.
 - A. Applications for construction permits.
 - 1. Estimate of construction costs.
 - 2. Sources of construction funds.
 - 3. Applicant's financial statements.
 - 4. Conclusive evidence of financial qualifications.
Reporting adverse changes to the Commission.
 - 5. Alternative demonstration of financial qualifications.
 - B. Applications for operating licenses.
 - 1. Estimate of operating costs and sources of funds.
 - 2. Applicant's financial statements.
 - 3. Conclusive evidence of financial qualifications.
Reporting adverse changes to the Commission.
 - 4. Alternative demonstration of financial qualifications.
 - C. Applications by joint applicants.
- III. Applicants Which Are Newly Formed Entities.
 - A. Applications for construction permits.
 - 1. Estimate of construction costs.
 - 2. Sources of construction funds.
 - 3. Applicant's financial statements.
 - B. Applications for operating licenses.
 - 1. Estimates of operating revenues and expenses.
 - 2. Applicant's financial statements.
- IV. Transfers of Ownership Interests.
- V. Insignificant Financial Interests.
- VI. Annual Financial Statements - Reporting Requirement.
- VII. Additional Information.

Enclosure 8

I. GENERAL INFORMATION

This appendix is intended to apprise applicants for licenses to construct and operate production or utilization facilities of the types described in Section 50.21(b) or Section 50.22, or a testing facility, of the ~~[general-kinds-of]~~ financial data and other related information that will demonstrate the financial qualifications of the applicant to carry out the activities for which the permit or license is sought. ~~[The-kind-and-depth-of-information-described-in-this-guide-is-not-intended-to-be-a-rigid-and-absolute-requirement;--in-some-instances;-additional-pertinent-material-may-be-needed;--in-any-case;-the-applicant-should-include-information-other-than-that-specified-if-such-information-is-pertinent-to-establishing-the-applicant's-financial-ability-to-construct-and-operate-the-proposed-facility.]~~

The provisions of this appendix are in accordance with the requirements of Section 50.33(f) of this Part. The appendix sets forth certain financial criteria that, when satisfied by an applicant, demonstrate conclusive evidence of financial qualifications. An applicant that satisfies the specified criteria is financially qualified under the Commission's regulations to pursue the activities for which the permit or license is sought. An applicant that does not satisfy the specified criteria will provide additional information at the Commission's request to demonstrate its financial qualifications. Further inquiry and adjudication of an applicant's or a licensee's financial qualifications is foreclosed after the Commission has determined that conclusive evidence of financial qualifications has been demonstrated. An exception to this is the case of an

applicant or a licensee, previously found financially qualified through the criteria that demonstrate conclusive evidence, that no longer satisfies either one or both of the specified criteria.

Item V of this appendix specifies certain circumstances in which an applicant for an "insignificant financial interest" in a facility is normally not required to submit the financial information addressed in Section 50.33(f) of this Part and in this appendix to the Commission.

Since separate findings of financial qualifications will be made by the Commission at the construction permit stage of the licensing process and at the operating license stage, the nature of the information to be included in the application at each of these stages is discussed separately.

It is important to observe also that both Section 50.33(f) and this appendix distinguish between applicants which are established [~~organizations~~] entities and those which are newly formed entities organized primarily for the purpose of engaging in the activity for which the permit or license is sought. Those in the former category will normally have a history of operating experience and be able to submit [~~financial-statements~~] data reflecting the financial results of past operations. With respect [~~;-however;-~~] to the applicant which is a newly formed company established primarily for the purpose of carrying out the licensed activity, with little or no prior operating history, somewhat more detailed data and supporting documentation will generally be necessary. For this reason, the appendix describes separately the scope of information to be included in applications by each of these two classes of applicants.

~~[In determining an applicant's financial qualifications, the Commission will require the minimum amount of information necessary for that purpose. No special forms are prescribed for submitting the information. In many cases, the financial information usually contained in current annual financial reports, including summary data of prior years, will be sufficient for the Commission's needs. The Commission reserves the right, however, to require additional financial information at the construction permit stage, at the operating license stage, and during operation of the facility, particularly in cases in which the proposed power-generating facility will be commonly owned by two or more existing companies or in which financing depends upon long-term arrangements for the sharing of the power from the facility by two or more electrical-generating companies.]~~ The data specified in this guide will generally be sufficient for the Commission to determine an applicant's financial qualifications for a construction permit or an operating license. However, the Commission reserves the right to require additional financial information prior to construction or during construction or operation of the facility. This is particularly true in cases of significant adverse changes in the financial condition of an applicant or licensee or in response to significant adverse economic developments.

Applicants, permit holders and licensees are encouraged to consult with the Commission with respect to any questions they may have relating to the requirements of the Commission's regulations or the information set forth in this appendix.

II. APPLICANTS WHICH ARE ESTABLISHED ~~[ORGANIZATIONS]~~ ENTITIES

A. Applications for construction permits -

1. Estimate of construction costs. For electric utilities, each applicant's estimate of the total cost of each unit of the proposed facility should be broken down as follows and be accompanied by a statement describing the bases from which the estimate is derived:

(a) Total nuclear production plant

costs \$ _____

(b) Transmission, distribution and

general plant costs \$ _____

(c) Nuclear fuel inventory cost for

first core \$ _____

Total Estimated Cost \$ _____

~~[Section 2.790 of 10 CFR Part 2 and Section 9.5 of 10 CFR Part 9 indicate the circumstances under which information submitted by applicants may be withheld from public disclosure.]~~

If the fuel is to be acquired by lease or other arrangement than purchase, the application should so state. The items to be included in these categories should be the same as those defined in the applicable electric plant and nuclear fuel inventory accounts ~~[prescribed by the Federal Power Commission]~~ stated in the Uniform

(NOTE: Paragraph headings are underlined and are not new material.)

Enclosure 8

System of Accounts of the Federal Energy Regulatory Commission or an explanation given as to any departures therefrom.

Since the composition of construction cost estimates for production and utilization facilities other than nuclear power reactors will vary according to the type of facility, no particular format is suggested for submitting such estimates. The estimate should, however, be itemized by categories of cost in sufficient detail to permit an evaluation of its reasonableness.

2. Sources of construction funds. The application [~~should~~] shall include a brief statement of the applicant's general financial plan for financing the cost of the facility, identifying the source or sources upon which the applicant [~~relies~~] will rely for the necessary construction funds, e.g., internal sources such as [~~undistributed~~] retained earnings and depreciation accruals or external sources such as [~~borrowings~~] issuance of debt and equity securities. The application shall indicate the relative degree to which each source of funds is expected to contribute to the total required funds. The projected overall capital structure of the applicant during construction of the facility shall also be indicated.

A publicly-owned applicant shall submit excerpts from statutes, ordinances or other legal authority that allow it to issue bonds or other forms of indebtedness and to take other actions necessary to finance the facility.

3. Applicant's financial statements. The application shall also include the applicant's latest published annual financial report, together with ~~[such-current]~~ its most recent interim financial statements ~~[as-are-pertinent]~~. If such a report is not published, the balance sheet and operating statement covering the latest complete accounting year together with all pertinent notes thereto and certification by a public accountant ~~[should]~~ shall be furnished.
4. Conclusive evidence of financial qualifications. An applicant that satisfies the following two criteria is financially qualified under the Commission's regulations governing the issuance of construction permits. In addition to providing the information specified above, each applicant shall state in its application information sufficient to demonstrate how it does or does not satisfy each of the following two criteria:
 - (a) The applicant's rates for service are determined by state and/or federal regulatory agencies or by the applicant itself. For this purpose, the applicant's rates shall be considered to be self-determined if its rates are established either directly for itself or by its controlling governmental unit (e.g., by the city council for its municipal utility);
and
 - (b) The applicant's most senior long-term debt is rated "A" or higher by both of the major securities rating services (Moody's Investors Service, Inc., and Standard and Poor's Corporation).

(An applicant whose long-term debt is guaranteed by the United States, or an agency thereof, shall be deemed to have satisfied this criterion. Such an applicant shall submit copies of a loan commitment notice for debt that will finance construction of the facility.)

Reporting adverse changes to the Commission.

If at any time after submitting its construction permit application and before an operating license is issued, an applicant (that had previously been found financially qualified by satisfying the criteria that demonstrate conclusive evidence) no longer satisfies one or both of the above criteria, it shall promptly report the circumstances and reasons therefore to the Commission.

5. Alternative demonstration of financial qualifications.

An applicant that does not satisfy either one or both of the above criteria of conclusive evidence will provide additional financial information at the Commission's request. The information will enable the Commission to analyze the applicant's financial qualifications in greater detail and to determine if the applicant is financially qualified to pursue activities under the proposed permit.

- B. Applications for operating licenses. ~~[An application for a facility operating license will usually be filed near the time of completion of construction of the facility. Section 50.33(f) requires that all applications for operating licenses show that the applicant possesses~~

the-funds-necessary-to-cover-estimated-operating-costs;-or-has-reason-
able-assurance-of-obtaining-the-necessary-funds;-or-a-combination-of
the-two--In-addition;-each-application-for-a-license-for-a-facility
other-than-a-medical-or-research-reactor-is-required-to-show-that-the
applicant-possesses-or-has-reasonable-assurance-of-obtaining-the-funds
necessary-to-pay-the-estimated-costs-of-operation-for-the-period
of-the-license-or-for-5-years;-whichever-is-greater;-plus-the-estimated
costs-of-permanently-shutting-down-the-facility-and-maintaining-it-in-
a-safe-condition--For-purposes-of-the-latter-requirement;-it-will
ordinarily-be-sufficient-to-show-at-the-time-of-filing-of-the-appli-
cation;-availability-of-resources-sufficient-to-cover-estimated
operating-costs-for-each-of-the-first-5-years-of-operation-plus-the
estimated-costs-of-permanent-shutdown-and-maintenance-of-the-facility
in-safe-condition--It-is-also-expected-that;-in-most-cases;-the-appli-
cant's-annual-financial-statements-contained-in-its-published-annual
reports-will-enable-the-Commission-to-evaluate-the-applicant's
financial-capability-to-satisfy-this-requirement.]

1. Estimate of operating costs and sources of funds. During the review of an application for an operating license, the applicant will provide, at the Commission's request, current estimates of the total annual cost to operate the facility for each of the first five years of operation and estimates of the costs to permanently shut down the facility and maintain it in a safe condition. The applicant will also describe the sources of funds to cover operating costs and shutdown and maintenance costs.

2. Applicant's financial statements. The application shall include the applicant's latest published annual financial report, together with its most recent interim financial statements. If such a report is not published, the balance sheet and operating statement covering the latest complete accounting year together with all pertinent notes thereto and certification by a public accountant shall be furnished.

3. Conclusive evidence of financial qualifications. An applicant that satisfies the following criterion is financially qualified under the Commission's regulations governing the issuance of operating licenses. Each applicant shall state in its application information sufficient to demonstrate how it does or does not satisfy the following criterion:

The applicant's rates for service are determined by state and/or federal regulatory agencies or by the applicant itself. For this purpose, the applicant's rates shall be considered to be self-determined if its rates are established either directly for itself or by its controlling governmental unit (e.g., by the city council for its municipal utility).

Reporting adverse changes to the Commission.

If at any time after submitting its application or while the facility is licensed, an applicant or licensee (that had previously been found financially qualified by satisfying the criterion that demonstrates conclusive evidence) no longer

satisfies the above criterion, it shall promptly report the circumstances and reasons therefore to the Commission.

4. Alternative demonstration of financial qualifications.

An applicant that does not satisfy the above criterion of conclusive evidence will provide additional financial information at the Commission's request. The information will enable the Commission to analyze the applicant's financial qualifications in greater detail and to determine if the applicant is financially qualified to pursue activities under the proposed license.

C. Applications by joint applicants -

Joint applicants are a group of established entities that have agreed to apply for and to pursue activities under a construction permit or operating license. Each joint applicant is individually subject to all of the above requirements for established entities. In addition to providing the Commission with the information required for established entities, joint applicants shall submit copies of their joint ownership and operation agreement (or similar agreement or contract) that outlines financial responsibilities of the parties.

Joint applicants are differentiated from a newly formed entity in that the latter does not have a significant operating history that can be analyzed from the financial qualifications standpoint. The requirements for newly formed entities are covered in III, below.

III. APPLICANTS WHICH ARE NEWLY FORMED ENTITIES

A. Applications for construction permits -

1. Estimate of construction costs. The information that ~~[will]~~ is normally ~~[be]~~ required of applicants which are newly formed entities ~~[will]~~ does not differ in scope from that required of established ~~[organizations]~~ entities. Accordingly, applicants ~~[should]~~ shall submit construction cost estimates as described above for established ~~[organizations]~~ entities.
2. Sources of construction funds. The application ~~[should]~~ shall specifically identify the source of sources upon which the applicant ~~[relies]~~ will rely for the funds necessary to pay the cost of constructing the facility, and the amount to be obtained from each. With respect to each source, the application ~~[should]~~ shall describe in detail the applicant's legal and financial relationships with its stockholders, corporate affiliates, or others (such as financial institutions) upon which the applicant is relying for financial assistance. If the sources of funds relied upon include parent companies or other corporate affiliates, information to support the financial capability of each such company or affiliate to meet its commitments to the applicant ~~[should]~~ shall be set forth in the application. This information ~~[should]~~ shall be of the same kind and scope as would be required if the parent companies or affiliates were in fact the applicant. ~~[Ordinarily, it will be necessary that copies of agreements or contracts among the companies be submitted.]~~

The established entities comprising the newly formed entity shall submit copies of the joint ownership and operation agreement (or similar agreement or contract) that outlines the financial responsibilities of the parties.

3. Applicant's financial statements.

As noted earlier in this appendix, an applicant which is a newly formed entity will normally not be in a position to submit the usual types of balance sheets and income statements reflecting the results of prior operations. The applicant [~~should~~] shall, however, include in its application a statement of its assets, liabilities and capital structure as of the date of the application.

B. Applications for operating licenses -

~~[1.--Current-financial-statements.--In-its-application-for-a-license to-operate-the-facility,-the-applicant-should-include-a-statement-of-its-current-financial-condition.]~~

1. Estimates of operating [income] revenues and expenses. [~~In-order to-enable-the-Commission-to-evaluate-the-applicant's-financial qualifications-to-operate-the-completed-facility-and,-if-necessary, to-shut-it-down,-as-required-by-Section-50.33(f),-the-application for-a-license-to-operate-a-facility-other-than-a-medical-or-research reactor-should-include-a-statement-of-the-applicant's-estimate of-annual-income-and-expense-for-the-first-five-years-of-operation:]~~
During the review of an application for an operating license, the applicant will provide, at the Commission's request, current

estimates of the facility's annual operating revenues and operating expenses for each of the first five years of operation.

The statement should list operating revenues and expenses in sufficient detail to permit an assessment of the reasonableness of the estimates.

The expected source of operating revenues shall be indicated. In addition, the applicant [~~should~~] shall include its estimate of costs and indicate the source of funds to permanently shut down the facility and maintain it in a safe condition [~~if-that-should-become-necessary~~].

2. Applicant's financial statements. In its application for a license to operate the facility, the applicant shall include a statement of its assets, liabilities and capital structure as of the date of the application.

IV. TRANSFERS OF OWNERSHIP INTERESTS

A transfer of ownership interest in a licensed facility requires prior Commission approval by amendment to the permit or license. (See Section 50.10.) The financial information required by the Commission for its review of a proposed ownership transfer is the same type of information required for an initial permit or license. Accordingly, a proposed new owner or a owner seeking an increased ownership share in a licensed facility is subject to the requirements of this appendix and Section 50.33(f). The provisions for insignificant financial interests in V, below, are an exception to these requirements.

V. INSIGNIFICANT FINANCIAL INTERESTS

An ownership interest of less than five percent in a facility by any one

applicant is considered insignificant from the financial qualifications standpoint. (With respect to a nuclear power plant, "facility" means each nuclear unit.) Accordingly, the Commission generally does not review and no finding is necessary on the financial qualifications of an applicant for less than a five percent ownership interest in a facility. Likewise, the applicant for such an interest is normally not required to submit the financial information specified in Section 50.33(f) of this Part and in this appendix. (Such an applicant is required to file its annual financial report with the Commission in accordance with VI, below, and Section 50.71(b).) However, the Commission may elect to review such an interest if it appears that extenuating circumstances may be present. For example, such an interest would be subject to the financial qualifications review if the interest appears to represent a significant level of control over the construction or operation of the facility.

Likewise, an application for a license amendment involving less than a five percent increase in ownership interest by any one applicant is not subject to the financial qualifications review. However, such an applicant is subject to the financial qualifications review if its proposed total ownership in the facility is greater than five percent and the applicant has not previously been subject to the financial qualifications review with respect to that facility.

These provisions for insignificant financial interests do not affect other provisions in this Chapter for licensing of an ownership interest or for prior approval by the Commission of transfers of ownership interests.

VI. ANNUAL FINANCIAL STATEMENTS - REPORTING REQUIREMENT

Each licensee and each holder of a construction permit for a production or utilization facility of a type described in Section 50.21(b) or Section 50.22, or a testing facility is required by Section 50.71(b) to file its annual financial report with the Commission at the time of issuance thereof. This requirement does not apply to licensees or holders of construction permits for medical and research reactors.

VII. ADDITIONAL INFORMATION

The Commission may, from time to time, request the applicant or licensee, whether an established [~~organization~~] entity or newly formed entity, to submit additional or more detailed information respecting its financial arrangements and status of funds if such information is deemed necessary to enable the Commission to determine [~~an~~] the applicant's financial qualifications for the permit or license or a licensee's financial qualifications to continue the conduct of the activities authorized by the license and to permanently shut down the facility and maintain it in a safe condition.