



FINANCIAL QUALIFICATIONS (FQ) LICENSE CONDITIONS

CONFIRMATION AND CLOSE-OUT PROCESS

David A. Repka
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Timing

- Non-utility generators will secure committed financing after planned Combined License (COL) – when market conditions and other factors establish project viability.
- Reg. Guide 1.206, C.I.1.1.5, *Schedule* – allows applicants to include a commitment to provide the construction and startup schedules after issuance of the COL when the licensee has made “a positive decision to construct the plant.”
- The COL will create needed certainty for Project Finance lenders.

Predictive Licensing Findings & License Conditions

- There is a “settled principle” that “predictive findings are a legitimate component of the NRC licensing process.”
 - *Pacific Gas and Electric Co. (Diablo Canyon)*, ALAB-811, 21 NRC 1622, 1627 (1985).
- NRC’s Part 52 regulations are premised on the principle that a COL can be issued subject to later verification of completion of actions and implementation of programs
 - Inspections, Tests, Analyses and Acceptance Criteria (ITAAC).
 - Section 52.99 establishes a specific ITAAC close-out process.
- Part 52 is one NRC exercise of NRC’s broad discretion – that “reasonable assurance” findings may be predictive, based on future activities to be confirmed through normal regulatory oversight.
 - License conditions incorporate objective, verifiable criteria.
- **LES and PFS cases: Commission applied the same principle to FQ.**

Other (Non-FQ) Examples

- An applicant's design quality verification program is sufficient for licensing, notwithstanding pending corrective actions. The NRC will “in effect, approve applicant's present plans for future regulatory compliance.”
 - *Diablo Canyon*, ALAB-811, 21 NRC at 1627.
- NRC licensing boards may make predictive findings on emergency planning with conditions that will be subject to post-hearing verification by NRC staff.
 - *La. Energy Servs.* (Claiborne Enrichment Center), CLI-96-8, 44 NRC 107, 108 (1996), citing *Mass. v. NRC*, 924 F.2d 311, 331 (D.C. Cir. 1991), cert. denied, 502 U.S. 899 (1991); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-836, 23 NRC 479, 494-95 (1986).

Post-Licensing Confirmation

- An FQ License Condition will establish **objective, verifiable** requirements (criteria) for post-licensing confirmation.
 - NRC expectations for FQ for licensing will be met.
 - See FQ Requirements Compliance Matrix
 - License condition terms will not involve discretion.
 - License condition terms will be subject to a COL hearing.
- Confirmable conditions can be derived (for example) from anticipated Project Finance loan process and documentation.
 - See example “Audit/Inspection Checklist”
 - DOE Loan Facility under the DOE Loan Guarantee Program also includes conditions precedent.

License Condition Close-Out

- NRC staff will **review and confirm** satisfaction of all license conditions at the appropriate time (e.g., upon closing of Project Finance, prior to licensed construction).
 - Normal inspection/oversight process applies.
 - License conditions are legally enforceable.
- Similar to verification of a QA corrective action, completion of an emergency plan exercise, etc.
- FQ license condition can include NRC **notification** provisions.
 - Notification typical in license transfer approvals
- License condition closure **documented** in Inspection Report.

CONCLUSIONS

- An FQ License Condition is not a novel concept in NRC practice.
- NRC licensing requirements for FQ will be met, based on a “reasonable assurance” finding at the time of COL issuance – backed by a binding and enforceable License Condition.
- NRC confirmation and close-out is a normal post-licensing activity.