

February 5, 2013

MEMORANDUM TO: Amy E. Cubbage, Chief  
Policy Branch  
Division of Advanced Reactors and Rulemaking  
Office of New Reactors

FROM: Russell E. Chazell, Project Manager /RA/  
Policy Branch  
Division of Advanced Reactors and Rulemaking  
Office of New Reactors

SUBJECT: SUMMARY OF JANUARY 8, 2013, PUBLIC MEETING ON  
FINANCIAL QUALIFICATIONS FOR MERCHANT PLANT  
COMBINED LICENSE APPLICANTS

On January 8, 2013, U.S. Nuclear Regulatory Commission (NRC) staff held a Category 2 public meeting to explore the topic of the financial qualification determination for combined license (COL) applicants intending to do business as merchant plants which specifically focuses on the license condition proposal offered by the Nuclear Energy Institute (NEI) and other interested stakeholders. The meeting was held at the NRC Headquarters Two White Flint North office in Rockville, MD. The purpose of the meeting was to seek industry and public interest feedback regarding the financial qualification requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.33(f) as applied to merchant plant COL applicants.

The associated meeting notice is available at NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML12341A054. The following provides a brief summary of the meeting.

**Summary:**

Mr. Russell Chazell, Policy Branch, Division of Advanced Reactors and Rulemaking (DARR), Office of New Reactors (NRO), opened the meeting with an introduction and brief summary of the meeting agenda.

There then followed several formal presentations:

1. *Using License Conditions to Address FQ Issues for Non-Electric Utility Applicants*, by Ms. Ellen Ginsberg, Esq., Vice President, General Counsel & Secretary, Nuclear Energy Institute

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2. *Project Finance*, by Mr. Kenneth W. Hansen, Esq., Chadbourne & Parke LLP
3. *South Texas Project Units 3 & 4, Combined License Application – Financial Qualifications Issues*, by Mr. John Matthews, Esq., Partner, Morgan Lewis
4. *Financial Qualifications (FQ) License Conditions, Confirmation and Close-Out Process*, by Mr. David A. Repka, Esq., Winston & Strawn, LLP

After the formal presentations, a roundtable discussion of the license condition concept ensued with input from NEI, COL applicants, and industry. Near the end of the meeting, an opportunity for comment by the public was afforded.

### **Discussion:**

Ms. Ginsberg began the session with an overview of NEI's FQ license condition proposal. She introduced the other presenters and stated that NEI's view is that the NRC regulations require a COL applicant to demonstrate that it possesses or has reasonable assurance of obtaining the necessary funds for construction and operation yet the financial markets are not likely to commit funds until the COL has issued. She asserted that this issue is generic and will affect all non-electric utility applicants. Ms. Ginsberg then introduced Mr. Hansen.

Mr. Hansen discussed the concept of "project finance" and how it applies to large construction projects. Project Finance is the mechanism proposed by NEI and Nuclear Innovation North America (NINA) as the basis for a COL license condition. Mr. Hansen started with the question of whether, in his opinion, the project finance process could be used to provide reasonable assurance to construct a nuclear power plant. He stated that it could. He defined project finance as lending against the assets of the project and the cash flow expected from the project's operation. He also stated that, once operating, the plant's first payment priority, under the "waterfall" method of allocating payment priority, would be to the operations and maintenance of the plant. Debt service and profit would be subordinate priorities. He also stated that financiers would be very risk averse, particularly given the nature of a nuclear power plant, and would ensure that the project was viable and would be operated safely as a condition of financing it. However, financiers would not move forward with a project unless the regulatory environment was favorable. Later in the meeting, Mr. Repka indicated that issuance of the COL provides that regulatory certainty.

Mr. Matthews discussed the NINA-specific license condition proposal in his presentation. He asserted that the FQ conundrum is a generic issue applicable to all merchant plant COL applicants. Mr. Matthews specifically discussed the South Texas Units 3 & 4 project and, in June 2011, first proposed issuance of a conditioned COL that could, presumably, be used to satisfy the NRC required FQ finding and thereby facilitate project financing. He discussed the Atomic Energy Act and his opinion of the authority it grants the Commission regarding FQ requirements and asserted that the fundamental purpose of the NRC FQ requirements to ensure safe construction and operation of a project. He further asserted that the job of the NRC is to ensure safety, not to insist a project be economically viable. Mr. Matthews stated that it is the role of the investors to validate the business case for a given project. He stated that there is precedent for the NRC to use license conditions for FQ determinations. He also asserted that financiers would not commit funding to a project without an issued COL. Mr. Matthews provided

a hypothetical project cost sheet and demonstrated how the proposed license condition would provide reasonable assurance of adequate funding in that example.

Next, Mr. Repka presented a mechanism for satisfying the license condition using the project closing model. Mr. Repka stated that the Commission's reasonable assurance finding necessary to issue the COL would be a predictive finding based on the process of the project closing. Specifically, he stated that the NRC recognizes there are some things that can "come later" and be confirmed by showing satisfaction of the terms of the license condition. He characterized the license condition proposal as one of meeting all the requirements at the time of licensing with verification of some things later using the license condition.

After a break, the roundtable discussion ensued and consisted primarily of the NRC staff members posing questions to the presenters and then engaging in extended discussion of the responses.

Near the end of the meeting, members of the public present on the phone bridge or in the room were provided an opportunity to comment. One member of the public, a journalist, asked what the next steps were. Mr. Mayfield indicated that the staff is developing a paper to submit to the Commission with a recommendation. Mr. Nieh indicated that the staff has reached no such recommendation at this time.

A transcript of the meeting was obtained and is available in ADAMS under accession number ML13022A446.

**Conclusion:**

The meeting concluded at approximately 11:30 a.m.

Enclosure:  
Attendance List

cc w/encl: See next page

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<b>DATE</b>	01/31/2013	02/01/2013	02/04/2013	02/05/2013

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(Revised 01/23/2013)

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**PUBLIC MEETING ON FINANCIAL QUALIFICATIONS FOR MERCHANT PLANT COMBINED  
LICENSE APPLICANTS**

**January 8, 2013**

**Attendance List**

<b>Name</b>	<b>Organization</b>	<b>Name</b>	<b>Organization</b>
Russell Chazell	NRC	Pat Castleman	NRC
Amy Cubbage	NRC	Jonathan DeGange	NRC
Michael Dusaniwskyj	NRC	Ronaldo Jenkins	NRC
John Jolicoeur	NRC	Jocelyn Lian	NRC
Earl Libby	NRC	Mike Mayfield	NRC
Ho Nieh	NRC	Anneliese Simmons	NRC
Michael Spencer	NRC	Tom Tai	NRC
Richard Turtill	NRC	Susan Uttal	NRC
Sara Kirkwood	NRC	Gary Becker*	NuScale Power
Mike Caverly	PPL	Anne Cottingham	NEI
Mark Finley	UniStar	Steven Frantz	Morgan Lewis
Bill Freebairn	Platts	Greg Gibson	UniStar
Ellen Ginsberg	NEI	Kenneth Hansen	Chadbourne & Parke
Scott Head	NINA	Debbie Hendell	UniStar
John Matthews	Morgan Lewis	Tim Matthews	Morgan Lewis
Mark McBurnett	NINA	David Repka	Winston & Strawn
Amy Roma	Hogan Lovells	Jim Saldarini*	Bechtel & mPower
Terry Sensue*	Holtec International	Jeff Simmons	Luminant

\* by phone bridgeline

Enclosure