This draft section is being issued to facilitate NRC interactions with the public on the draft regulatory basis which the NRC staff is developing to support the rulemaking on the "Financial Qualifications for Reactor Licensing."

Proposed Financial Qualifications Requirements Included in the Draft Regulatory Basis for the Rulemaking on Financial Qualifications for Reactor Licensing

7. Proposed Financial Qualifications Requirements

This section describes the considerations for applicants to meet the proposed financial qualification review standard, proposed changes to current review guidance and processes, and other factors on which the NRC is requesting public comment. The proposed revisions will conform the current reactor financial qualifications standard in which the applicant has reasonable assurance of obtaining the funds necessary to construct and operate the reactor, to a Part 70 standard in which the applicant appears to be financially qualified.

7.1 New Review Standard - Appears to be Financially Qualified and the Demonstration of Financial Capacity

The revised financial qualification standard will reflect the financial capacity of the applicant to obtain the necessary funding for the project. Financial capacity will be reflected in an Applicant Financial Capacity Plan (AFCP) along with the construction cost estimate, at the time of application. The AFCP and cost estimate should provide the NRC with adequate information for it to conclude that the applicant appears to be financially qualified. An applicant's financial capacity is not a predictive finding of the likelihood of an applicant ultimately obtaining financing. Rather, it reflects the applicant's level of understanding of the size and scope of the project including the level of capital necessary to undertake the project, and it reflects the organizational and human resources, experience, skills, and expertise required to obtain proper financing and ultimately finance the project, when appropriate.

In order for the NRC staff to find that an applicant appears to be financially qualified, the applicant must satisfactorily demonstrate its financial capacity by providing the following:

- Construction cost estimate – The NRC staff will require a cost estimate to ensure that the applicant understands the size and scope of the project. The cost estimate should provide enough detail to provide the NRC staff with a good understanding of the costs and cost assumptions associated with construction.

- Applicant Financial Capacity Plan – The NRC staff will require a high-level summary discussion with information detailed enough for it to conclude that the applicant has both an understanding of the project requirements and the financial capacity to obtain financing. The plan should include:

    - A description of the management team, including personnel on the team and reliance on consultants. The description should reflect the team's experience and expertise in the areas of finance, capital sourcing, and large build projects. Detailed discussion should address:
        - The applicant's relationship, or those of its consultants, with potential sources of project funding; and
        - Past experiences with financing the construction and operation of large energy or other infrastructure projects.

    - A description of the anticipated funding methods and sources, and a discussion of past successes, if applicable, with such financing used in past energy or other large build projects. These methods may include, but are not limited to:
        - Rate recovery arrangement;

- Commitments on the part of project finance funding sources, as well as any commitments from Federal and State government agencies, and documentation of such commitments, if applicable;
- Power sales contracts, power purchase arrangements, and other planned sales of electricity;
- Other guarantees; and/or
- License conditions.

The NRC staff views the applicant's management team and past experiences with infrastructure projects as a key component for demonstrating financial capacity. Such information demonstrates an understanding of the complexities of this type of project, the challenges in raising capital, and the need for ensuring financing before beginning reactor construction.

The NRC staff views methods of funding as a component of establishing financial capacity. The NRC staff will further discuss below how different classes of applicants can show their method of funding in order to establish their financial capacity.

7.2 Classes of Applicants

The revised requirements will affect the following classes of applicants:

7.2.1 Merchant Applicants

The NRC staff understands that most merchant plant applicants will not have any committed sources of funding at the time of application and that they intend to establish financing for their projects after obtaining the license. Merchant applicants in many cases will likely pursue funding through the project finance model[1] to establish all funding for the project at one time using multiple sources of capital. The project finance approach is often used to underwrite long-term financing of infrastructure and industrial projects based upon the projected cash flows of the project rather than on the balance sheets of its sponsors, and usually involves a number of equity investors, known as "sponsors", as well as a "syndicate" of banks or other lending institutions that provide loans to the operation. Loans made to fund the project are generally secured by the project assets, rather than from the general assets or creditworthiness of the project sponsors, and are paid entirely from the project's cash flow.

However, the NRC staff recognizes the possibility that an applicant, particularly one with an aggressive construction schedule, may present an application that contains committed sources of funding. The NRC staff thinks it is unlikely that an applicant will have partial funding at the time of application but recognizes that this is theoretically possible. Accordingly, the NRC staff has concluded to distinguish between applicants that have more than 50% of their financing versus those with less than 50% financing at the time of application.

7.2.1.1 Financial Qualifications Review for Construction of Merchant Applicants with Less Than 50% Financing at the Time of Application

[1] See discussion of project finance, "Transcript of Public Meeting on Financial Qualifications for Merchant Plant Combined License Applicants," dated January 8, 2013, beginning with Mr. Kenneth Hansen's discussion on Page 17 of the transcript (ADAMS Accession No. ML13022A446).

For those applicants with less than 50% committed funding sources at the time of application, the NRC staff expects that the applicant will provide:

- A construction cost estimate and
- An AFCP with proposed license condition(s)

The cost estimate and AFCP are intended to demonstrate an applicant's financial capacity as described in Section 7.1. The NRC expects that the applicant will propose license conditions that will ensure that funding is available before beginning reactor construction[2]. The NRC will use these license conditions in order to find that the applicant has financial capacity when funding is not otherwise committed.

An example of a license condition that must be met by such applicants before beginning reactor construction is:

- The licensee[3] will notify the NRC at least 60 days prior to its anticipated date of construction that the license condition has been fulfilled and that the following are available for inspection:
    - An updated cost estimate;
    - Documentation justifying any variances from the original cost estimate provided in the application; and
    - Documentation demonstrating that the licensee has secured financing to meet the updated cost estimate for the project. This documentation should include closing documents or documented proof of parent and affiliate assurances, or capital from other sources that reflect financing for the project.

An updated cost estimate is the basis for determining that the licensee has the funds necessary to begin reactor construction. The documentation demonstrating that the licensee has secured financing ensures the availability of funds to begin reactor construction.

As discussed in Section 6.3, the NRC staff does not believe that it needs a more detailed financial review in order to fulfill its public health and safety mission. Accordingly, the NRC staff will not review levels of equity, evaluate the credit worthiness of investors, or perform other detailed financial analyses as currently required by Appendix C of 10 CFR Part 50. The purpose in meeting this license condition is to confirm the licensee's financial capacity. For an applicant with less than 50% funding at the time of application this condition will ensure that adequate funds are available before beginning reactor construction.

7.2.1.2 Financial Qualifications Review for Construction of Merchant Applicants with More Than 50% Financing

For those applicants with more than 50% committed funding sources at the time of application, the NRC staff expects that the applicant will provide:

[2] The use of license conditions is not mandated by the regulations. Thus, it is possible that an applicant could propose an alternative approach. The NRC will consider such approaches on a case by case basis.
[3] Throughout this document the NRC uses the term "licensee" to refer to an applicant who has obtained its license. As used in this document the term "licensee" should also be understood to include holders of CPs.

- A construction cost estimate and
- An AFCP with documentation demonstrating commitments of financing equal to at least 50% of the construction cost estimate.

The cost estimate and AFCP are intended to demonstrate an applicant's financial capacity as described in Section 7.1. The NRC staff views that an applicant with commitments for at least 50% of its construction funding has a sufficient demonstration of financial capacity. In fact, having such commitments is a stronger showing of financial capacity than the license condition outlined in Section 7.2.1.1. Accordingly, a license condition requiring documentation for the remaining portion of the construction funding is not necessary. This is because the purpose of the NRC staff's review is not to ensure that the project is completed; rather it is to ensure that an applicant has the financial capacity to obtain financing when the project moves forward.

7.2.1.3 Financial Qualifications Review for Operation of Merchants Applicants

The NRC staff expects that the information to be submitted for operations would be similar to what is currently required in 10 CFR 50.33(f)(2). The NRC staff's review of 5 year projected costs of operations along with projected sources of funding for those 5 years is a well established financial review approach and the NRC is not aware of any concerns with the use of this standard. Thus, for operations, the NRC staff expects that the applicant will provide:

- Estimate for total annual operating cost for each of the first 5 years of operations and
- Documentation of sources of funds to cover each of the first 5 years of operations. Such funds could come from, but are not limited to, power purchase agreements, parent assurances, and/or revenues from the anticipated sale of power.

The documentation reflecting available funds to cover operating and maintenance expenses ensures that the licensee can operate and maintain the plant after completion of construction.

If an applicant does not have finalized sources of funds for operations, the applicant could propose a license condition for operations. The applicant will submit an estimate for total annual operating cost for each of the first 5 years of operations along with the following license condition:

- The licensee will notify the NRC at least 60 days prior to initial loading of fuel that the license condition has been fulfilled and that the following are available for inspection:
    - An updated cost estimate for each of the first 5 years of operations;
    - Documentation justifying any variance from the original cost estimate provided in the application; and
    - Documentation of sources of funds to cover each of the first 5 years of operations. Such funds could come from, but are not limited to, power purchase agreements, parent assurances, and/or revenues from the anticipated sale of power.

If the applicant does not have finalized sources of funding for operations at the time of application, this condition will ensure that adequate funds are available prior to initial fuel loading.

7.2.2 Utilities

Utilities need only provide FQ for construction because utilities are qualified for operations based on the availability of rate recovery.

The NRC considers a utility that has rate recovery for construction to be financially qualified. In this circumstance, the only submittal that the NRC expects is the demonstration of the availability of rate recovery for construction. To the extent the utility does not have rate recovery for construction, the NRC will treat the applicant in the same manner that it treats merchants applicants and will expect the utility to submit the information discussed in Section 7.2.1.

7.2.3 Non-power Production and Utilization Facilities

Non-power production and utilization facilities include all existing non-power reactors licensed under 10 CFR 50.21(a) and (c) and proposed production and utilization facilities licensed under 10 CFR 50.22 for the production of medical radioisotopes, such as molybdenum-99.

Thus far, no one has raised a concern with the NRC regarding the FQ requirements for non-power production and utilization facilities. It does not appear that this type of facility has had the same difficulty meeting current requirements as is being experienced by current merchant plant applicants. Historically, applicants for non-power production and utilization facilities have had immediate construction plans and funding to complete their construction and operation. The funding required to construct and operate non-power production and utilization facilities is at least an order of magnitude less than power reactors.

Some of the considerations discussed in Section 6 do not apply to non-power production and utilization facilities (e.g., resident inspector program). Moreover, there is precedent for requiring more extensive FQ review for this class of applicants. In 2004, while eliminating FQ requirements for license renewal of power reactors, the NRC made a decision to continue to apply FQ requirements for license renewal of non-power reactors while it was eliminating FQ for license renewal of power reactors.

Because it appears that the current requirements are working for this class of applicants, the NRC expects that this class of applicants will show they are financially qualified by demonstrating their availability of funds at the time of licensing. The NRC anticipates that some of the current requirements of Appendix C of 10 CFR Part 50, will be placed in guidance for this class of applicants.

7.2.4 License Transfers

The NRC staff's review of license transfer applications is conducted pursuant to 10 CFR 50.80. Currently, 10 CFR 50.80(b)(1) requires an applicant to submit the same FQ information as would be required if the application was for an initial license. Information needed to demonstrate financial qualification varies depending on whether the license transfer is for a CP, OL, or COL. The NRC staff does not propose to change 10 CFR 50.80.

A transfer of a license for a facility that is either under construction or where construction has not yet begun would be reviewed as discussed in Section 7.2.1 and 7.2.2, depending on whether the applicant is a merchant or a utility. The NRC staff anticipates that license conditions will be utilized as appropriate for facilities that have not yet begun construction. If an applicant proposes to transfer a CP for a facility that has already commenced construction, the NRC staff will evaluate the applicant's financial capacity on a case by case basis. The NRC staff will determine whether or not the use of license conditions is appropriate depending on the specific circumstances of the applicant.

A transfer of a license to a merchant applicant for a facility where construction has been completed but where operations have not yet begun would be reviewed as discussed in Section 7.2.1.3. The NRC staff will consider the use of license conditions for a facility that has not completed fuel load.[4] The transfer of a license for a facility to a utility applicant where construction has been completed but where operations have not yet begun does not require an FQ review.

A transfer of a license to a merchant applicant for a facility that is operating would be reviewed as discussed in Section 7.2.1.3. The NRC staff does not anticipate that there will be a significant change from its current practice regarding its review of a license transfer application for operating facilities. Currently, an applicant for a license transfer must demonstrate reasonable assurance of obtaining the funds necessary to cover estimated operations costs. This demonstration is typically achieved by providing the source of funds necessary to cover the cost of 5 years of operations. Similarly, the NRC staff expects that an applicant will provide the source of funds for 5 years of operations under the new proposed requirement. This is consistent with how reviews are conducted for facilities licensed under 10 CFR Part 70. The review of a license transfer application during operation will be completed in the same way license transfer reviews are currently performed. The NRC staff does not currently anticipate using license conditions because it does not envision a circumstance where these conditions would be needed. The transfer of a license for a facility that is currently operating to a utility applicant does not require an FQ review.

7.2.5 Change of Status

The NRC staff's review of a change of status application is conducted pursuant to 10 CFR 50.76. A change of status is when a licensee ceases to be an electric utility. The NRC staff does not anticipate that there will be a significant change in its review of change of status applications. The standard for change of status applicants is shifting from a finding of "reasonable assurance" to a finding of "appears to be financially qualified," and the review will follow a similar approach explained in Section 7.2.4 for OL transfer.

7.3 Summary

The NRC staff believes that this new review standard, as discussed in Section 7.1, will remove an unnecessary impediment to licensing and provides a new process for efficient FQ reviews for the various classes of applicants described in Section 7.2. The NRC staff also believes that this new review standard will maintain the public health and safety and will meet the Commission's direction as described in the SRM for SECY-13-0124.

[4] An example of when a license condition might be appropriate would be if the applicant for the license transfer did not have a schedule for loading fuel.