

ENCLOSURE 5

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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

*Insert date 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 submissions 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

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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.

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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.

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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.

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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.