

ENCLOSURE 6

8001280570

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.