

ENCLOSURE 7

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ENCLOSURE 7

VALUE/IMPACT ANALYSIS

PROPOSED RULE CHANGE - FINANCIAL QUALIFICATIONS

10 CFR 50.33(f); 50.54(q); Appendix C, 10 CFR 50

A. NEED FOR THE CHANGE

The NRC staff has completed a comprehensive study of the financial qualifications requirements that apply to Part 50 applicants and licensees. The staff has examined and more clearly defined the relationship between financial qualifications and safety. As a result, the staff has concluded that the scope of the financial qualifications review is excessive for a significant portion of NRC's utility applicants. Accordingly, the proposed rule would establish criteria that, if satisfied by a utility applicant, would demonstrate conclusive evidence of financial qualifications. An applicant that demonstrates such conclusive evidence would not be subject to a more extensive financial qualifications review as at present.

B. VALUE/IMPACT ON APPLICANTS, LICENSEES AND NRC

Utilities would be the only type of applicant to be significantly impacted by the rule change because rate-setting authority would be a criterion of conclusive evidence for both construction permits and operating licenses. The level of reduced impact will be determined specifically by utilities' financial condition as evidenced by their bond ratings. The staff estimates that under current economic and financial conditions that the majority of current Part 50 utility applicants

and licensees would satisfy criteria that constitute conclusive evidence of financial qualifications. The level of effort and amount of information to be supplied by a utility applicant that meets the specified criteria would be significantly reduced from the present requirement. The level of staff effort would be correspondingly reduced.

Adverse economic developments affecting the financial condition of the utility industry could result in fewer applicants and licensees satisfying the criteria and an increased scope of effort for those applicants, licensees and the staff. Improved economic and financial conditions could have the opposite effect. The degree of change in effort by applicants, licensees and the staff would depend on the significance or severity of the economic and financial developments and the corresponding effects on bond ratings.

Since the current financial qualifications requirements are considered to be the most stringent requirements that are rational, it is anticipated that the level of effort for an applicant or licensee would never exceed the current level, even under significant adverse economic conditions. The staff's overall level of effort during any one period will be determined in large part by the financial condition of individual applicants and licensees and the extent to which they demonstrate conclusive evidence of financial qualifications. It is noted that under both the existing and proposed rules, that the staff monitors the financial condition of NRC licensees. The staff's sources of information include annual financial

reports filed by holders of construction permits and by licensees in accordance with 10 CFR 50.71(b) and data reported by a number of financial publishing firms.

The proposed rule would also impact on the level of effort expended by licensing and appeal boards in adjudicating the financial qualifications issue. Since utilities have been the applicants in most cases where financial qualifications has been a contested issue, it follows that the financial condition of utility applicants and licensees would directly affect the effort expended by the boards. If an applicant demonstrates conclusive evidence of financial qualifications, the only contestable element would be the adequacy of the applicant's demonstration that it meets the criteria; an exhaustive inquiry of financial qualifications would not be necessary.

The value of the proposed rule would be that the level of effort by applicants, licensees, the staff and NRC adjudicatory boards would appropriately reflect the relationship between financial qualifications and safety. In cases where financial qualifications is a potential safety issue, the staff would conduct a detailed review; in cases where it is not, the staff's review would 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 subjected to extensive reviews and time-consuming litigation. The proposed rule would 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 would be subject to a full-scale review.

In summary, the staff believes that adoption of the proposed rule would 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.

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COMPARATIVE TEXT - PROPOSED REGULATION

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 [show] demonstrate that the applicant possesses [~~the funds necessary to cover estimated construction costs and related fuel cycle costs or that the applicant has reasonable assurance of obtaining the necessary funds, or a combination of the two.~~] 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) [~~With respect to any production or utilization facility of a type described in Section 50.21(b) or Section 50.22, or a testing~~

~~facility, the following specific requirements shall apply.~~

If the application is for an operating license, such information shall [show] demonstrate that the applicant possesses [~~the funds necessary to cover estimated operating costs or that the applicant has reasonable assurance of obtaining the necessary funds, or a combination of the two.~~] or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, [or for five years, whichever is greater], 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 [~~an~~] 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 [~~to enable~~] 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.

(NOTE: Entire Table of Contents is new.)

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Enclosure 8

1. 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 [general-kinds-of] 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-kind-and-depth-of-information-described-in-this-guide-is-not-intended-to-be-a-rigid-and-absolute-requirement;-in-some-instances,-additional-pertinent-material-may-be-needed;-in-any-case,-the-applicant-should-include-information-other-than-that-specified-if-such-information-is-pertinent-to-establishing-the-applicant's-financial-ability-to-construct-and-operate-the-proposed-facility.]

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.

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 [organizations] 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 [financial-statements] data reflecting the financial results of past operations. With respect [y-however,] 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.

[In determining an applicant's financial qualifications, the Commission will require the minimum amount of information necessary for that purpose. No special forms are prescribed for submitting the information. In many cases, the financial information usually contained in current annual financial reports, including summary data of prior years, will be sufficient for the Commission's needs. The Commission reserves the right, however, to require additional financial information at the construction permit stage, at the operating license stage, and during operation of the facility, particularly in cases in which the proposed power-generating facility will be commonly owned by two or more existing companies or in which financing depends upon long-term arrangements for the sharing of the power from the facility by two or more electrical-generating companies.] 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 [ORGANIZATIONS] 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 \$ _____

~~[Section 2.790 of 10 CFR Part 2 and Section 9.5 of 10 CFR Part 9 indicate the circumstances under which information submitted by applicants may be withheld from public disclosure.]~~

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 ~~[prescribed by the Federal Power Commission]~~ stated in the Uniform

(NOTE: Paragraph headings are underlined and are not new material.)

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 [~~should~~] 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 [~~relies~~] will rely for the necessary construction funds, e.g., internal sources such as [~~undistributed~~] retained earnings and depreciation accruals or external sources such as [~~borrowings~~] 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 [~~such-current~~] its most recent interim financial statements [~~as-are-pertinent~~]. 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 [~~should~~] 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. [~~An application for a facility operating license will usually be filed near the time of completion of construction of the facility. Section 50.33(f) requires that all applications for operating licenses show that the applicant possesses~~

the funds necessary to cover estimated operating costs; or has reasonable assurance of obtaining the necessary funds; or a combination of the two. In addition, each application for a license for a facility other than a medical or research reactor is required to show that the applicant possesses or has reasonable assurance of obtaining the funds necessary to pay the estimated costs of operation for the period of the license or for 5 years, whichever is greater, plus the estimated costs of permanently shutting down the facility and maintaining it in a safe condition. For purposes of the latter requirement, it will ordinarily be sufficient to show at the time of filing of the application, availability of resources sufficient to cover estimated operating costs for each of the first 5 years of operation plus the estimated costs of permanent shutdown and maintenance of the facility in safe condition. It is also expected that, in most cases, the applicant's annual financial statements contained in its published annual reports will enable the Commission to evaluate the applicant's financial capability to satisfy this requirement.]

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 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 [will] is normally [be] required of applicants which are newly formed entities [will] does not differ in scope from that required of established [organizations] entities. Accordingly, applicants [should] shall submit construction cost estimates as described above for established [organizations] entities.

2. Sources of construction funds. The application [should] shall specifically identify the source of sources upon which the applicant [relies] 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 [should] 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 [should] shall be set forth in the application. This information [should] shall be of the same kind and scope as would be required if the parent companies or affiliates were in fact the applicant. [~~Ordinarily, it will be necessary that copies of agreements or contracts among the companies be submitted.~~]

The established entities comprising the newly formed entity shall submit copies of the 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 [~~should~~] 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. Current financial statements. In its application for a license to operate the facility, the applicant should include a statement of its current financial condition.]~~

1. Estimates of operating [income] revenues and expenses. [~~In order to enable the Commission to evaluate the applicant's financial qualifications to operate the completed facility and, if necessary, to shut it down, as required by Section 50.33(f), the application for a license to operate a facility other than a medical or research reactor should include a statement of the applicant's estimate of annual income and expense for the first five years of operation.]~~

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 ~~[should]~~ 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 ~~[if-that-should-become-necessary]~~.

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 a 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 [~~organization~~] 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 [~~an~~] 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.