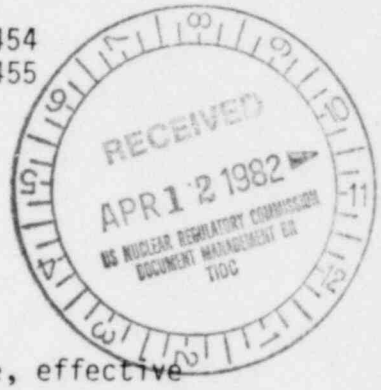
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
COMMONWEALTH EDISON COMPANY	)	Docket Nos. 50-454
	)	50-455
(Byron Station, Units 1 and 2)	)	



NRC STAFF MOTION TO DISMISS CONTENTION 1(i)

INTRODUCTION

On March 31, 1982, the Commission published a final rule, effective immediately, in the Federal Register eliminating entirely the financial qualifications review and findings for an electric utility applicant and providing that the financial qualifications of such an applicant are not among the issues to be considered in pending or future construction permit and operating license proceedings. 47 F.R. 13750, 13753.[1/]

The Applicant's alleged lack of financial capability is among the contested issues in this proceeding.[2/] In view of the final, effective

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1/ A copy of the applicable notice is attached.

2/ Specifically, contention 1 states, in material part:

> [T]he Applicant should not be granted an operating license unless it demonstrates that [it] is financially capable of supporting [improvements in management, operations, and procedures].
>
> As [a basis] for this contention, intervenors cite the following...(i) [t]he difficult financial position of Applicant, in that its credit ratings have been lowered, it is experiencing difficulty in raising money from traditional sources, and the Illinois Commerce Commission is presently re-evaluating Applicant's entire construction program (including Byron) to determine if funds by way of rates will be allowed.

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regulation eliminating consideration of financial qualifications in pending operating license proceedings, the NRC Staff moves for the dismissal of DAARE/SAFE Contention 1(i) as set forth more fully below.

DISCUSSION

In light of the Commission's elimination of financial qualification issues from nuclear licensing proceedings, contention 1(i) is no longer a litigable issue in this case. The Appeal Board recently upheld a Licensing Board's denial of an untimely intervention petition which sought solely to raise an issue of financial qualifications on the primary grounds that such issue was no longer cognizable in NRC construction permit proceedings. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC ____, (March 31, 1982). The new regulation similarly precludes such issues from being litigated in operating license proceedings such as the one at bar. Accordingly, the Licensing Board need not and should not adjudicate the financial qualifications issues raised in contention 1(i) and should dismiss that contention on the ground that it raises issues that are not to be considered under the Commission's amended regulations.

CONCLUSION

For the foregoing reasons, the Staff hereby moves that contention 1(i) be immediately dismissed from the proceeding without further consideration.

Respectfully submitted,

Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of April, 1982.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION TO DISMISS CONTENTION 1(i) in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system this 8th day of April, 1982:

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Elimination of Review of Financial Qualifications of Electric Utilities in Licensing Hearings For Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to eliminate entirely requirements for financial qualifications review and findings for electric utilities that are applying for construction permits or operating licenses for production or utilization facilities. The Commission is also amending its regulations to require power reactor licensees to obtain on-site property damage insurance, or an equivalent amount of protection (e.g., Letter of credit, bond, or self insurance), from the time that the Commission first issues an operating license for the nuclear reactor.

EFFECTIVE DATE: For amendments eliminating financial qualifications review (§ 2.104, Sections VI and VIII of Appendix A to Part 2, §§ 2.4, 50.2, Appendix C to Part 50, Appendix M, paragraph 4.(b) to Part 50, § 50.33(f), and § 50.40), Mar. 31, 1982. For amendments establishing on-site property damage insurance requirement (§§ 50.54(w) and 50.57), June 29 1982. In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting provision that is included in paragraph (w)(5) of § 50.54 has been submitted for approval to the Office of Management and Budget (OMB). It is not effective until OMB approval has been obtained.

FOR FURTHER INFORMATION CONTACT: Jim C. Petersen, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone 301-492-9883).

SUPPLEMENTARY INFORMATION:

I. Background

On August 18, 1981, the Commission published a notice of proposed rulemaking in the **Federal Register** (46 FR 41786) concerning requirements for financial qualifications review and findings for electric utilities that are applying for permits or licenses for production or utilization facilities. As proposed, the rule would have:

(1) Eliminated entirely financial qualifications review requirements for construction permit applicants; and

(2)(i) Also eliminated entirely these requirements for operating license applicants; or

(ii) Retained these requirements for operating license applicants to the extent they require submission of information concerning the costs of permanently shutting down the facility and maintaining it in a safe condition (i.e., decommissioning costs).

Concurrently, the Commission proposed amending its regulations to require, on an interim basis, power reactor licensees to "maintain the maximum amount of commercially available on-site property damage insurance, or an equivalent amount of protection (e.g., letter of credit, bond, or self insurance), from the time that the Commission first permits ownership, possession, and storage of special nuclear material at the site of the nuclear reactor."

In the **Federal Register** notice, the Commission based its proposal for this rulemaking, in part, upon the statutory basis in the Atomic Energy Act of 1954, as amended ("AEA") for the financial qualifications regulations and its discussion in *Public Service Company of New Hampshire, et. al.* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1 (1978) *("Seabrook")*. In that decision and the proposed rulemaking, the Commission affirmed its belief that the existing financial qualifications review has done little to identify substantial health and safety concerns at nuclear power plants. However, because the Commission believed that there are matters important to safety which may be affected by financial considerations, it requested comments regarding the type of NRC financial review that would focus effectively on considerations that might adversely affect safety.

II. Public Comments on the Proposed Rule

Over 160 comments were received on the proposed rulemaking and have been categorized as follows:

Private citizens—98 comments received
Public interest groups—30 comments received
Insurance groups—2 comments received
Legal counsel—8 comments received
Governmental organizations and individuals—10 comments received
Utilities and utility groups—16 comments received
Architect-engineers and contractors—2 comments received

All private citizen comments and all but two public interest group comments oppose reducing or eliminating the Commission's financial qualification review requirements. However, they generally support imposing immediate decommissioning financing requirements and also requiring licensees to demonstrate their ability to clean up after an accident. By contrast, utilities, utility groups, and utility contractors support completely eliminating the Commission's financial qualifications requirements, including decommissioning. Further, utilities and their representatives generally oppose requiring mandatory property damage insurance. Comments from legal counsel generally reflected the interests and views of their utility, insurance, or public interest clients. Governmental organizations and individuals reflected a spectrum of views, although most were against eliminating the financial qualifications review. Some states and municipalities identified potential legal conflicts between certain provisions of the proposed rulemaking and state law. A summary of the comments is presented below. Those who are interested may obtain copies of specific comments from the Public Document Room or the NRC Secretary under designation PR-50 (46 FR 41786), by writing to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

A. *Reducing or eliminating the Commission's financial qualifications review.* Those arguing against reducing or eliminating the Commission's financial qualifications review make four major points. First, they discount NRC's presumption that public utilities can meet the financial demands of constructing and operating nuclear plants. Citing Seabrook, WPPSS, TMI, South Texas and other examples, commenters maintain that utilities often have experienced and will continue to experience difficulty in raising funds to cover capital, operating, and maintenance costs (particularly in periods of high interest rates and overcapacity), whether or not such costs can be recovered in the rate base through Construction Work in Progress (CWIP) or otherwise recovered in rates. Second, these commenters maintain that the inability to recover all costs provides an incentive for utilities to skimp on important safety components and quality assurance standards. Some commenters cite the discussion of financial disincentives in the *Rogovin Report (Three Mile Island: A Report to the Commission and the Public*, Mitchell Rogovin, Director, January 1980) to support their views. Another commenter suggests that utilities will be tempted to lower wages which would lead to higher turnover and, thus, to employment of inadequately trained personnel. Third, commenters maintain that NRC inspection efforts and capabilities are

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inadequate to provide sufficient assurance of safety. Even if violations are found, some commenters argue that NRC enforcement efforts are inadequate. Fourth, the commenters assert that the financial qualifications review function is statutorily required by 42 U.S.C. 2232(a), (c) and (d).

Further, many of those arguing against eliminating the financial qualifications review recommend that the Commission should at least retain that portion of the review pertaining to decommissioning. They state that the ongoing decommissioning rulemaking is no substitute for an immediate general requirement to demonstrate financial capability to decommission a nuclear production on utilization facility safely and expeditiously. Many expressed the view that the generic decommissioning study would not be completed in a reasonable time.

By contrast, those favoring the Commission's proposed reduction or elimination of the financial qualifications review function generally support the Commission's reasoning that such a review has done little to identify substantive health and safety problems at nuclear power plants and that the Commission's inspection and enforcement activities provide more effective protection of public health and safety. Most utilities and their associates support complete elimination of the financial qualifications review, including provisions pertaining to decommissioning. These commenters maintain that, if any regulations relating to the financing of decommissioning are adopted, they should await completion of the Commission's generic rulemaking on decommissioning.

The Commission has received no comments to persuade it to change significantly its reasoning on the proposed financial qualifications rule. As indicated above, many of those opposing the proposed rule change have concluded that experience with Seabrook, WPPSS and other plants demonstrates the close connection between financial qualifications and public health and safety. The Commission disagrees. As to the first point raised by commenters opposing elimination of the financial qualifications review, the Commission does not find any reason to consider, in a vacuum, the general ability of utilities to finance the construction of new generation facilities. Only when joined with the issue of adequate protection of the public health and safety does this issue become pertinent. As to this, the commenters' second point, the Commission in its *Seabrook* decision indicated its support for the substance of the proposed rule—elimination of the financial qualifications review because of the lack of any demonstrable link between public health and safety concerns and a utility's ability to make the requisite financial showing.

The actual financial situation analyzed in that case has not changed. There is no evidence that the safety of the public has been adversely affected by Public Service Company of New Hampshire's (PSCNH) difficulties in obtaining financing. It is true that to raise capital, PSCNH has sold part of its ownership in the Seabrook plant, but such action does not have any demonstrable link to any safety problems. Similarly, citing WPPSS' experience is not convincing, because WPPSS' response (and that of most other utilities encountering financial difficulties) has been to postpone or cancel their plants, actions clearly not inimical to public health and safety under the Atomic Energy Act.

As to the third point raised in opposition to the proposed rule, in the absence of facts to the contrary, the Commission cannot accept unsupported statements that, as a general matter its inspection and enforcement efforts are inadequate. The examples that commenters cite (e.g., South Texas) appear to substantiate, rather than undercut, the Commission's view that any violations of safety regulations are being found and corrected and that, in any event, such violations cannot be shown to arise from a licensee's alleged lack of financial qualifications.

With respect to the final assertion that the financial qualifications review function is statutorily mandated. Section 182a of the AEA, 42 U.S.C. 2232(a), clearly indicates that such function is within the Commission's discretionary authority, but is not mandated. As noted in the proposed rule, this interpretation of Section 182a has been approved by the United States Court of Appeals for the First Circuit in *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 93 (1978), affirming the NRC's *Seabrook* decision.

On balance, after careful consideration of the comments submitted and of the factors discussed in the notice of proposed rulemaking, the Commission has elected to promulgate the first of the two alternatives outlined in the proposed rule, i.e., eliminate the financial qualifications review of electric utilities entirely at the CP and OL stages, including elimination of any consideration of decommissioning funding. This is not meant to discount the importance of decommissioning funding to public health and safety, but rather recognizes that any action on decommissioning is more appropriate in the context of the generic rulemaking now being conducted. Until that time, the Commission has concluded that it is premature to include any final decision on decommissioning in this final rule on financial qualifications. Because the generic decommissioning rule is scheduled to be published in 1982 and since all licensees will be required to meet any financial requirements imposed as a result of that rulemaking, there should be little practical effect in temporarily eliminating consideration of decommissioning funding from licensing activities. Moreover, if decommissioning financing issues were continued to be allowed in current licensing proceedings, two undesirable effects may result. First, there would be an increased chance that findings in such cases might contradict evolving Commission policy in this area. Second, one positive gain from the final rule would be countered, in that there could be expected to be little, if any, reduction in the contentions before the licensing boards on financial qualifications issues, thereby not significantly reducing the time and effort devoted to those issues.

B. *Mandatory property insurance for decontamination.* Comments are similarly divided on the issue of requiring on-site property insurance to cover decontamination expenses resulting from an accident. Those who support keeping the financial qualifications review generally support requiring a utility to demonstrate proof of its ability to clean up after an accident. The Commission interprets these comments as supporting mandatory property insurance, insofar as it covers accident cleanup costs. The other commenters favoring elimination of the financial qualifications rule generally either (1) oppose mandatory coverage outright because of recent self-initiated moves by the utility industry to obtain insurance or, (2) favor substantial modification of the rule to clarify several of its provisions.

The first group of commenters do not generally state their reasons for favoring mandatory insurance except for an undefined and non-quantifiable general benefit in protecting public health and safety. Some indicated that the amount of insurance currently available is not sufficient to cover accidents such as TMI-2. However, because of recently announced increases in the amount of coverage available and the continuing evolution in the insurance markets, this

concern may not be as great as might otherwise be the case.

As indicated above, the second group of commenters—primarily utilities and their representatives—object more to the wording of certain provisions of the proposed on-site property damage insurance rule than to the requirement itself. Several commenters recognize that the practical effect of requiring mandatory insurance has been reduced, particularly since the TMI-2 accident, because most utilities will buy whatever amount of coverage is offered, within reasonable limits, as a matter of good business judgment. Other commenters indicate that the Commission's estimates of annual premiums required for a typical reactor may have been understated. Estimated premiums for coverage currently available (i.e., $375 or $450 million) are $3 million per year for a typical two-unit site.

In light of these comments and for the reasons stated in the proposed rule, the Commission has decided to retain the requirement in the final rule that electric utilities must have on-site property damage insurance, but several modifications have been made pursuant to the comments received. The following changes have been incorporated into the text of the final rule on property insurance:

1. The definition of "maximum available amount" has been clarified. This term could have been interpreted to mean that utilities would be required to switch their insurance coverage to the carrier offering the greatest amount at any particular time. Another interpretation could be that utilities would be required to obtain coverage from the two major insurers or any other insurer that decides to enter this market. Finally, the "maximum available" could have included any increment no matter how highly priced or how restrictive the terms and conditions. The Commission's intent is neither to disrupt the insurance markets by forcing utilities to switch their insurance carriers unnecessarily nor to require utilities to obtain insurance under unreasonable terms and conditions. The rule has been changed to clarify the Commission's intent, specifically in § 50.54(w).

2. Some commenters maintained that the proposed rule should apply only to insurance covering decontamination of a facility suffering an accident and not to "all risk" property damage insurance. Because decontamination insurance is the Commission's only concern from the point of view of protecting public health and safety, coverage to replace the existing facility on an "all risk" basis is beyond the scope of the Commission's authority. By the same reasoning, the Commission disagrees with the position taken by some commenters that it is unfair to many owners of smaller power reactors to require insurance greatly exceeding the cost of replacing the facility. A TMI-2 type accident could well require coverage approaching $1 billion, no matter what the original value or size of the facility. The Commission expects that the required insurance will cover reasonable decontamination and cleanup costs associated with the property damage resulting from an accident at the licensed facility. Until completion of studies evaluating the cost of cleaning up accidents of varying severity, it is prudent to require for all power reactors a reasonable amount of insurance for decontamination expense.

3. Several persons commented that reactor licensees should not be required to maintain on-site property damage insurance until the operating license has been received. With fuel merely stored at a reactor, the chance of an accident requiring extensive decontamination is extremely remote. The Commission agrees and has changed the rule accordingly, so that such insurance need be in force only when the utility is licensed to operate the reactor.

4. Several Texas utilities commented that the Texas constitution (and, apparently, the Louisiana and Idaho constitutions) prohibits certain municipal utilities from purchasing insurance either offered by mutual insurance companies or involving retroactive assessments. The Commission has revised the rule to address these concerns.

5. One commenter discussed the need to clarify the amount of time required of the licensee to obtain not only initial insurance but also subsequent increases offered. Another suggested that many regulated utilties may have difficulty in obtaining approval to purchase insurance within 90 days. The Commission has revised the rule to reflect its view that 90 days is a reasonable time in which to take reasonable steps to obtain both initial and any additional on-site property damage insurance.

6. The phrase "commercially available" insurance could have been construed to exclude insurers such as NML and NEIL. The Commission recognizes this possible but erroneous interpretation and has changed the wording of the rule accordingly.

III. Other Considerations

A. *Requirement for Additional Information.* As indicated in the proposed rule, the Commission does not intend to waive or relinquish its residual authority to require such additional information in individual cases as may be necessary for the Commission to determine whether an application should be granted or denied or whether a license should be modified or revoked. See, for example, the fourth sentence of Section 182a of the AEA. Similarly, no change in the present powers of the Commission with regard to the financial qualifications review of non-utility applicants for Part 50 licenses will be made. In addition, an exception to or waiver from the rule would be possible to require the submission of financial information from a particular electric utility applicant if special circumstances are shown pursuant to 10 CFR 2.758 in an individual licensing hearing.

B. *Proctical Impocts.* Also as indicated above and in the proposed rule, the Commission continues to expect that the final rule will, in normal circumstances, reduce the time and effort which applicants, licensees, the NRC staff and NRC adjudicatory boards devote to reviewing the applicant's or licensee's financial qualifications. The rule will eliminate staff review in cases where the applicant is an electric utility, presumed to be able to finance activities to be authorized under the permit or license.

C. *License Amendments.* The elimination by this rule of the financial qualifications review for electric utility applicants also applies to any electric utilities that become co-owners via amendments to existing permits or licenses. From time to time, original owners of production or utilization facilities make arrangements to transfer to other electric utilities a portion of the ownership in the facility. Normally, an amendment request is then filed, which seeks to add the new partner as co-owner and co-licensee. For the purposes of this rule, similar to the situation relating to prelicensing antitrust review of these new owners, the amendment request comprises the initial license application by the new, prospective co-owner, even though the amendment request may actually be filed by the present licensee and owner. *E.g., Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-475, 7 NRC 752, 755, n.7 (1978). Since the same financial qualifications review considerations apply to all electric utility applicants, regardless of the particular manner in which their application is tendered to the NRC, it should be clear that this final rule applies to any request for an amendment that would, if granted, include a new electric utility as a co-

owner and co-licensee in a production or utilization facility.

IV. Conclusion

In summary, the Commission has concluded that the adoption of the rule will substantially reduce the effort and resources associated with demonstrating financial qualifications of electric utilities that are applying to construct and operate nuclear production and utilization facilities without reducing the protection of the public health and safety. This portion of the rule will be effective immediately upon publication, pursuant to 5 U.S.C. 533(d)(1), since the rule is expected to relieve significantly the obligation of certain applicants with respect to information required for construction permits and operating licenses, and also to reduce the amount of unnecessary, time-consuming staff review and adjudicatory proceedings. Although the rule will be applied to ongoing licensing proceedings now pending and to issues or contentions therein, *Union of Concerned Scientists* v. *AEC*, 499 F.2d 1069 (D.C. Cir. 1974), it should be clear that the NRC neither intends nor expects that the rule will affect the scope of any issues or contentions related to a cost/benefit analysis performed pursuant to the National Environmental Policy Act of 1969, either in pending or future licensing proceedings for nuclear power plants. Under NEPA, the issue is not whether the applicant can demonstrate reasonable assurance of covering certain projected costs, but weather is merely what costs to the applicant of constructing and operating the plant are to be put into the cost-benefit balance. As is now the case, the rule of reason will continue to govern the scope of what costs are to be included in the balance, and the resulting determinations may still be the subject of litigation. Thus, financial qualifications would not be expected to become an issue or contention in an NRC licensing proceeding insofar as NEPA might be involved.

The Commission has also concluded that adoption of the on-site property damage insurance requirement, as modified, will better ensure that adequate protection of the health and safety of the public is achieved. This requirement will be effective June 29, 1982.

Paperwork Reduction Act Statement

The Nuclear Regulatory Commission has submitted this rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The date on which the information collection requirements of this rule become effective, unless advised to the contrary, accordingly, reflects inclusion of the 60 day period which the Act allows for such review.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule reduces certain minor information collection requirements on the owners and operators of nuclear power plants licensed pursuant to sections 103 and 104b of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, 2134b. These electric utility companies are dominant in their service areas. Accordingly, the companies that own and operate nuclear power plants are not within the definition of a small business found in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, the following amendments to 10 CFR Parts 2 and 50 are published as a document subject to codification.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 reads as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953 (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841); 5 U.S.C. 552. Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200-2.206 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606, 2.730, 2.772 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133). Sections 2.800-2.807 also issued under 5 U.S.C. 553. Section 2.808 also issued under 5 U.S.C. 553 and sec. 102, 83 Stat. 853 (42 U.S.C. 4332). Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended by Pub. L. 95-209, 91 Stat. 1483 (42 U.S.C. 2039). Appendix A is also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1472 (42 U.S.C. 2135).

2. In § 2.4, new paragraph (s) is added to read as follows:

§ 2.4 Definitions.

As used in this part,

* * * * *

(s) "Electric utility" means any entity that generates or distributes electricity and which recovers the costs of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and state and federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility."

3. In § 2.104, paragraph (b)(1)(iii) and introductory paragraph (c)(4) are revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(b) * * *

(1) * * *

(iii) Whether the applicant is financially qualified to design and construct the proposed facility, except that this subject shall not be an issue if the applicant is an electric utility seeking a license to construct a production or utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

(c) * * *

(4) Whether the applicant is technically and financially qualified to engage in the activities to be authorized by the operating license in accordance with the regulations in this chapter, except that the issue of financial qualifications shall not be considered by the presiding officer in an operating license hearing if the applicant is an electric utility seeking a license to operate a production or utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

4. In Appendix A of Part 2, Sections VI(c)(1)(iii) and VIII(b)(4) are revised to read as follows:

Appendix A—Statement of General Policy and Procedure: Conduct of Proceedings for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing Is Required Under Section 189A of the Atomic Energy Act of 1954, as Amended

* * * * *

VI. Posthearing Proceedings, Including the Initial Decision

* * * * *

(c) * * *

(1) * * *

(iii) Whether the applicant is financially qualified to design and construct the proposed facility, except that this subject shall not be an issue if the applicant is an electric utility seeking a license to construct a production or utilization facility of the type described in § 50.21(b) or 50.22.

* * * * *

VIII. Procedures Applicable to Operating License Proceedings

* * * * *

(b) * * *

(4) Whether the applicant is technically and financially qualified to engage in the activities to be authorized by the operating license in accordance with the Commission's regulations, except that the issue of financial qualifications shall not be considered by the board if the applicant is an electric utility seeking a license to operate a production or utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 50.2, a new paragraph (x) is added to read as follows:

§ 50.2 Definitions.

As used in this part,

* * * * *

(x) "Electric utility" means any entity that generates or distributes electricity and which recovers the costs of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and state and federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility."

7. In § 50.33, paragraph (f) is revised to read as follows:

§ 50.33 Contents of applications; general information.

Each application must state:

* * * * *

(f)(1) Information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought. However, no information on financial qualifications, including that in paragraphs (f)(1) (i) and (ii) of this section, is required in any application, nor shall any financial review be conducted, if the applicant is an electric utility applicant for a license to construct or operate a production or utilization facility of the type described in § 50.21(b) or § 50.22.

(i) If the application is for a construction permit, the applicant shall submit information that demonstrates 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 costs of the facility and related fuel cycle costs, and shall indicate the source(s) of funds to cover these costs.

(ii) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation 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 for 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 source(s) of funds to cover these costs. An application to renew or extend the term of an operating license must include the same financial information as required in an application for an initial license.

(2) Except for electric utility applicants for construction permits and operating licenses, 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 must also include information showing:

(i) The legal and financial relationships it has or proposes to have with its stockholders or owners;

(ii) Their financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualifications.

(3) Except for electric utility applicants for construction permits and operating licenses, the Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability 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.

* * * * *

8. In § 50.40, paragraph (b) is revised to read as follows:

§ 50.40 Common standards.

* * * * *

(b) The applicant is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter. However, no consideration of financial qualifications is necessary for an electric utility applicant for a license for a production or utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

9. In § 50.54, a new paragraph (w) is added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) Each electric utility licensee under this part for a production or utilization facility of the type described in § 50.21(b) or § 50.22 shall, by June 29, 1982, take reasonable steps to obtain on-site property damage insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the facility. *Provided*, that:

(1) This insurance must have a minimum coverage limit no less than the combined total of (i) that offered by either American Nuclear Insurers (ANI) and Mutual Atomic Energy Reinsurance Pool (MAERP) jointly or Nuclear Mutual Limited (NML); plus (ii) that offered by

Nuclear Electric Insurance Limited (NEIL), the Edison Electric Institute (EEI), ANI and MAERP jointly, or NML as excess property insurance;

(2) The licensee shall, within ninety (90) days of any increases in policy limits for primary or excess coverage that it has obtained pursuant to this paragraph, take reasonable steps to obtain these increases; and

(3) When a licensee is prohibited from purchasing on-site property damage insurance because of state or local law, the licensee shall purchase the specific amount of such insurance found by the NRC to be reasonably available to that licensee, or to obtain an equivalent amount of protection; and

(4) The licensee shall report on April 1 of each year to the NRC as to the present levels of this insurance or financial protection it maintains and the sources of this insurance or protection.

10. In § 50.57, paragraph (a)(4) is revised to read as follows:

§ 50.57 Issuance of operating licenses.

(a) * * *

(4) The applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations in this chapter. However, no finding of financial qualifications is necessary for an electric utility applicant for an operating license for a production or utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

Appendix C—[Removed]

11. Part 50 is amended by removing Appendix C.

12. In Appendix M to Part 50, paragraph 4.(b) is revised to read as follows:

Appendix M—Standardization of Design: Manufacture of Nuclear Power Reactors; Construction and Operation of Nuclear Power Reactors Manufactured Pursuant to Commission License

* * * * *

4.(a) * * *

(b) The financial information submitted pursuant to § 50.33(f) shall be directed at a demonstration of the financial qualifications of the applicant for the manufacturing license to carry out the manufacturing activity for which the license is sought.

* * * * *

Dated at Washington, D.C., this 24th day of March 1982.

For The Nuclear Regulatory Commission

Samuel J. Chilk,

Secretary of the Commission

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