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RELATED CORRESPONDENCE

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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September 21, 1984

Mr. Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, PA 19139

In the Matter of
PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station, Units 1 and 2)
Docket Nos. 50-352 and 50-353 OL

Dear Mr. Lewis:

Pursuant to the Atomic Safety and Licensing Board's ruling in its March 15, 1984 "Order Confirming Miscellaneous Record Rulings", the Staff hereby forwards the Commission's final rule regarding the financial qualifications of electric utilities.

Sincerely,

Nathene A. Wright
Counsel for NRC Staff

Enclosure: As stated

cc: Lawrence Brenner, Esq., Chairman
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DS07

Currently, acetic acid is permitted for use under 9 CFR 318.7(c)(4) as a refining agent to separate fatty acids and glycerol in rendered fats, provided it is eliminated in the process of manufacturing. Citric, lactic, L-tartaric, and phosphoric acids are all permitted for use as miscellaneous substances to acidify margarine or oleomargarine. Furthermore, citric acid is permitted as a flavoring agent in chili con carne.

Based upon available data, the Administrator finds that the use of these substances as acidifiers in processed meat and poultry products will not result in a product which is unwholesome, otherwise adulterated, or misbranded provided that these substances are added only in amounts sufficient to accomplish the stated technical effect and are indicated on the label. Prior to the preparation, sale or transportation of any meat or poultry product, the processor must obtain prior approval of the product label from FSIS. An essential element of the label approval process includes review and approval of the product's ingredient composition. Once a label is approved, the product so labeled must conform to the terms of the label approval in order to comply with the adulteration and misbranding provisions of the Meat and Poultry Products Inspection Acts. (21 U.S.C. 601 (m) and (n), 607(e), 610 (a) and (c), 453 (g) and (h), 457(d), 458(a) (1) and (2), 9 CFR 317.3, 317.4, 381.131 and 381.132). A new footnote is added in the charts under the heading "Amount" to indicate that specific determinations must be made for each product prior to label approval.

Therefore, the Administrator is amending the Federal mandatory meat and poultry products inspection regulations to include these substances classified as "Acidifiers" in the charts of approved substances in Parts 318 and 381 (9 CFR Parts 318 and 381). In addition, reference to a footnote (preexisting in Part 318 and added to Part 381) will be included in the charts under the heading "Products" informing interested persons where to write for information as to the specific products in which use of these substances is approved.

List of Subjects

9 CFR Part 318

Food additives, Food labeling, Meat and poultry products, Preparation of products.

9 CFR Part 381

Food additives, Food labeling, Poultry, Poultry products, Preparation of products.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 (9 CFR Part 318) reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 21 U.S.C. 601 *et seq.*, unless otherwise noted.

2. In § 318.7(c)(4) (9 CFR 318.7(c)(4)) a new class of substance entitled "Acidifiers" is added to the chart in alphabetical order. The descriptions of substance, purpose, products, and amount are added to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Acetic acid	To adjust acidity	Various [1]	Sufficient for purpose [2]
	Citric acid	do	do	Do.
	Lactic acid	do	do	Do.
	Phosphoric acid	do	do	Do.
	Tartaric acid	do	do	Do.

* * * * * *

[1] Information as to the specific products for which use of this substance is approved may be obtained upon inquiry addressed to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] Provided, that its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the desired technical effect as determined in specific cases prior to label approval under § 317.4.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 (9 CFR 381) reads as follows:

Authority: 71 Stat. 441, 448, as amended, 21 U.S.C. 463, 458; 7 CFR 2.15(a), 2.92 (7 FR 9706, May 16, 1972), unless otherwise noted.

2. In § 381.147(f)(4) (9 CFR 381.147(f)(4)) a new class of substance entitled "Acidifiers" is added to Table 1 in alphabetical order. The descriptions of substance, purpose, products, and amount are added to read as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Acetic acid	To adjust acidity	Various [1]	Sufficient for purpose [2]
	Citric acid	do	do	Do.
	Lactic acid	do	do	Do.
	Phosphoric acid	do	do	Do.
	Tartaric acid	do	do	Do.

* * * * * *

[1] Information as to the specific products for which use of this substance is approved may be obtained upon inquiry addressed to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, South Building, 14th and Independence SW, Washington, DC 20250.

[2] Provided, that its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the desired technical effect as determined in specific cases prior to label approval under § 381.32.

* * * * *

Done at Washington, D.C. on: August 29, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-24022 Filed 9-11-84; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: In response to a remand by the U.S. Court of Appeals for the D.C. Circuit which declared invalid the Commission's March 31, 1982 rule eliminating financial qualification review and findings for electric utilities at all stages of the licensing proceeding, the Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to eliminate financial qualification review and findings for electric utilities that are applying for operating licenses for utilization facilities if the utility is a regulated

public utility or is authorized to set its own rates. The Commission is reinstating a requirement for financial qualification review and findings for electric utilities that are applying for construction permits.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Carole F. Kagan, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Telephone: (202) 634–1493.

SUPPLEMENTARY INFORMATION:

I. Background

On April 2, 1984, the Commission published in the Federal Register (49 FR 13044) a notice of proposed rulemaking which would eliminate financial qualification review and findings for electric utilities applying for operating licenses for utilization facilities if the utility is a regulated public utility or is authorized to set its own rates. As detailed in the notice of proposed rulemaking, this action was taken in response to the decision of the District of Columbia Court of Appeals in *New England Coalition on Nuclear Pollution* v. *NRC*, 727 F.2d 1127 (D.C. Cir. 1984) which remanded the Commission's March 1982 rule (47 FR 13750) eliminating financial qualification review and findings for electric utilities applying for facility construction permits and operating licenses. The Court found the Commission's explanation of the final rule internally inconsistent because, in the Court's view, the reasons the Commission advanced for dispensing with the financial qualification review for electric utilities would, if supported by the facts, apply generally to all license applicants and would not support a rule that singled out utilities for special treatment.[1]

The proposed rule on remand was promulgated on the Commission's belief that case-by-case review of financial qualifications for all electric utilities at the operating license stage is unnecessary due to the ability of such utilities to recover, to a sufficient degree, all or a portion of the costs of construction and sufficient costs of safe operation through the ratemaking process. It is well established that public utility commissions (PUCs) are legally bound to set a utility's rates such that all reasonable costs of serving the public are recovered, assuming prudent management of the utility. *See, e.g., Federal Power Commission* v. *Hope Natural Gas Company*, 320 U.S. 519 (1944); *Bluefield Water Works and Improvement Company* v. *Public Service Commission of the State of West Virginia*, 262 U.S. 679 (1923). The Commission is reinstating financial qualification review for all construction permit applicants for the reasons stated in the notice of proposed rulemaking. (49 FR 13045).

The notice of proposed rulemaking solicited comments from interested persons. In order to provide additional information for the Commission's consideration in this rulemaking, NRC staff members visited with senior staff members of seven public utility commissions, two Federal agencies that regulate nuclear utilities and three publicly-owned[2] nuclear utilities. Telephone inteviews were conducted with two other State public utility commissions (New York and California) in response to concerns raised by commenters on the proposed rule. In addition, the staff analyzed data submitted by the National Association of Regulatory Utility Commissioners (NARUC) from its recent national survey of its member State public utility commissions and of publicly-owned nuclear utilities. This survey, referenced in the Notice of Proposed Rulemaking, was designed to determine whether, historically, utilities which have requested rate increases or rate provisions for operating safety requirements have regularly received them.

II. Analysis of Public Comment

A. Public Comment on the Proposed Rule

Forty-two comments were received on the proposed rulemaking. Slightly more than half of the commenters favored the proposed rule. Nearly all of these specifically endorsed the agency's conclusion that the regulated nature of public utilities assures adequate funding for safe operation through the ratemaking process. Most of these also indicated support for complete elimination of the financial qualification review requirement at all stages of the licensing process on the ground that there is no proven link between financial qualification reviews and safety. Two commenters espoused the view that Section 182 of the Atomic Energy Act does not mandate such reviews.

Several commenters expressed the view that the NRC's inspection and enforcement program is a more direct and efficient way of assuring operating safety than a review of a utility's finances. In addition, it was argued that the PUCs can more efficiently monitor the financial health of a utility on a continuing basis than can the NRC, whose expertise is in the health and safety area. The Commission, two commenters pointed out, can only judge the financial health of a utility based on prediction, while it can provide continual monitoring on health and safety issues.

Commenters opposing the proposed rule raised a number of issues. In the main, they disputed the premise that the ratemaking process provides reasonable assurance that utilities will be able to recover sufficient funds to safely operate a facility. Several grounds were offered for this attack:

- A utility may not achieve an expected rate of return (i.e., profit) from the ratemaking process.
- Utilities may not recover every cost item requested from the PUCs.
- Portions of new plants are sometimes phased into the rate base over a period of time, so the utility will not immediately recover all necessary expenses.
- Costs may be disallowed if imprudently incurred.
- Some States are preempted by the NRC's licensing authority from judging the financial capabilities of the utilities they regulate.
- Publicly-owned utilities are not assured of funding through the ratemaking process.

Other objections raised by commenters to the proposed rule were that review at the construction permit stage only comes too early to judge the actual capability of a utility to finance a nuclear facility; that there is no assurance that utilities will apply monies obtained through the ratemaking process to operating plants, rather than to facilities under construction, and that utilities have an incentive to put plants on line too early in order to obtain rate base treatment.

The Commission believes that many of the concerns expressed about the proposed rule reflect a misunderstanding of the nature of the Commission's jurisdiction over, and prior reviews of, the financial qualifications of utility applicants. The originnal rule requiring financial qualification review, promulgated in 1968, required a finding, prior to operating license issuance, that the utility "possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated costs

[1] In view of the limited applicability of the rationale expressed in the proposed rule and in this final rule, the concerns expressed by the Court no longer apply.

[2] "Publicly-owned utilities" are utilities owned by governmental units, governmentally-chartered units such as public utility districts, or by groups of consumers such as rural cooperatives, including associations of any of the foregoing.

of operation 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." As can be seen, the focus of the rule was on the availability of funds, rather than on whether funds were properly spent.

Despite the longstanding nature of the financial qualification reviews under the original rule, their safety rationale seems never to have been clearly set out. A financial disability is not a safety hazard *per se* because the licensee can, and under the Commission's regulations would be obliged to, simply cease operations if necessary funds to operate safely were not available. At most, the Atomic Energy Commission, in drafting the rule, must have intuitively concluded that a licensee in financially straitened circumstances would be under more pressure to commit safety violations or take safety "shortcuts" than one in good financial shape. Accordingly, the drafters of the rule sought to achieve some level of assurance, prior to licensing, that licensees would not be forced by financial circumstances to choose between shutting down or taking shortcuts while the license was in effect.

The limited scope of this approach as it bears on safety is apparent. Having a reasonably assured source of funds does not assure that money intended or allocated for safety reasons will be so spent. Moreover, concerns regarding safety performance are not confined to those utilities with financial difficulties. A whole host of circumstances, including poor training, inattention to detail, poor management attitude, and lack of safety commitment, can conceivably lead to poor safety performace. Many of these other concerns are subsumed within the topic "managment integrity," which has been a focus of several pending licensing proceedings.

Given the inherent limitations of the rule, it must have been the rule drafters' intent that the question of potential misuse of available funds, like these other integrity concerns, be addressed elsewhere, either in the review of the applicant's technical qualifications, managment, and training prior to licensing, or by the Commission's post-licensing inspection and enforcement process.

This is confirmed by longstading practice under the original rule. Pre-licensing financial reviews under the rule were, as the rule itself suggests, confined to assuring a source of funds, and no effort was made at that stage to establish assurance that funds would be properly spent. Thus the concerns expressed by some commenters that the ratemaking bodies do not assure that funds received by a utility through the ratemaking process will actually be applied to meeting the requirements for safe operation are not relevant to consideration of the Commission's financial qualification rule. Even though the rate process does no more than assure that regulated utilities will have the financial resources needed to operate safely, this limited assurance is all that the financial qualification rule was intended to achieve. These commenters' concerns go not to the need to reinstate financial qualification reviews, but to other issues beyond the scope of this rulemaking that have been, and continue to be, addressed in pre-licensing review of applicant's technical qualifications, managment and training, and by the post-licensing inspection and enforcement process.

A second misunderstanding stems from the impression that a utility would have to be guaranteed a rate of recovery equal to every penny it requested from the rate commission in order to assure safe operation. This impression has led several commenters to object to the proposed rule on the basis that rate regulation does not ensure a fixed level of profitability.

Neither in this rule nor in its financial qualification review has the Commission made any assumption as to the rate of return or the level of profit to be allowed to utilities from the operation of nuclear plants. Its concern is that reasonable and prudent costs of safely maintaining and operating nuclear plants will be allowed to be recovered through rates. This concern does not extend to any level of profit or rate of return beyond those operating expenses. The Commission's concern is with safe operation, not profits.

The same misunderstanding underlies the comment that utilities do not recover every cost item requested from rate commissions. It is not uncommon for a rate commission to deny certain requested cost items or portions thereof. These disallowances, however, deny a utility only a small portion of its total revenues. The amount of the disallowance may be reflected in a smaller profit margin, but the costs denied by the ratemaking bodies are not so great that the amount of these disallowances would exceed operating costs. NRC conversations with ratemaking bodies as well as the results of the NARUC questionnaire confirm that it is standard practice among ratemaking bodies to factor in the amount of disallowances to ensure that utilities receive enough rate relief when a plant goes into operation to recover all resonable costs of safe operation.

The same reasoning applies to the comment that rate base phase-ins and disallowances (portion of new plants either not allowed into the rate base or phased in to the rate base over a period of time) affect the utility's recovery of operating expenses. Again, such phase-ins may affect short-term profits, but does not affect recovery of operating expenses.

No sound basis has been shown for the allegation raised by the State of Texas that a State may be preempted from judging the financial capabilities of the utilities it regulates, because only the NRC has the authority to issue licenses and order shutdowns, or for the allegation that publicly-owned utilities are not assured of funding through the ratemaking process. The NRC's analysis of the NARUC survey, discussed *infra*, has shown that all State public utility commissions have sufficient ratemaking authority to ensure sufficient utility revenues to meet the cost of NRC safety requirements. Similarly, it has been shown that publicly-owned utilities have independent rate-setting authority which is used to cover the costs of operation, including those of meeting NRC safety requirements.

B. Public Comments on the NARUC Study

As indicated above, the National Association of Regulatory Utility Commissioners (NARUC) submitted to the Commission the results of a national survey of its members regarding the provision for nuclear plant operating funds through a State commission's ratemaking process. The survey also included the Federal Energy Regulatory Commission and a broad sample of publicly-owned nuclear utilities. The NRC staff analyzed the survey, and the results of both the survey and the NRC's analysis were placed in the NRC Public Document Room. An extension of the comment period on the rule was provided in order to give the public an opportunity to comment both on the survey and on the NRC analysis.

The NRC staff found that the survey lends strong support to the proposed rule. The conclusion that emerged from the study was that ratemaking authorities had varying mechanisms to ensure sufficient utility revenues to meet the costs of NRC safety requirements, but that all had such mechanisms. Only one instance was identified (Arkansas) where a revenue request to enable a utility to meet what were purported to be nuclear safety costs was denied.[3]

[3] In that situation, the dispute revolved around a single facility which was to serve both as a visitor's

Continued

That case is currently on appeal. Most ratemaking bodies indicated that no specific provision was made for NRC safety requirements, but that rates are established in general rate cases to produce sufficient overall revenues to assure sound functioning of the electric power systems, including nuclear plants. Some PUCs did indicate that their orders specifically allocate funds to meet NRC safety requirements. This question was a subject of particular focus during NRC staff visits to PUCs. The PUCs visited were unanimous in saying that safety-related operating expenses were *always* considered reasonable expenses when prudently incurred and were allowed to be recovered through rates.

Publicly-owned nuclear utilities were also surveyed. It was found that these have independent rate-setting authority that is used to recover costs of operation, including the costs of meeting NRC safety requirements. Exceptions were two cooperative utilities that, by State law, have their rates regulated by the State public utility commissions. Many publicly-owned and investor-owned nuclear plants are owned by groups of utilities, rather than solely-owned. Where this is the case, the respondents to the NARUC study indicated that they have contractual agreements with the other co-owners to increase their contributions to operating costs if total costs increase over time. The amount of any such increase is proportional to each utility's relative ownership share in the plant.

Those commenters who endorsed the Commission's conclusions on the NARUC study did so on the basis that the study shows that, no matter the regulatory mechanism, all PUCs and publicly-owned utilities have the authority to set rates in such a way that sufficient revenues to meet NRC safety requirements are assured.

One commenter stated that in one-quarter of the States regulators do not have the authority to assure adequate revenues to cover nuclear safety costs. This is incorrect. In those States, regulators do not have *specific* authority to treat nuclear safety costs as a separate case. They do, however, have a general grant of authority to allow recovery of all reasonable costs through rates. As previously indicated, reasonable costs of meeting NRC requirements are virtually automatically included within that definition.

center (non-safety-related expense) and as an emergency response center (safety-related expense). The issue was which portion of the costs of that facility should be defined as safety-related and, therefore, recoverable through rates.

The same commenter raised several objections to the conclusions drawn from the NARUC survey by the NRC. That commenter's primary argument is that the purpose of State utility regulation is not to assure the financial health of public utilities or to assure that utilities request funds for and devote funds to assure nuclear safety. The Commission understands the commenters's concern to be that State regulation will not assure the utility sufficient profits to allow it to safely operate a facility. This concern is unfounded. While the purpose of State utility regulations is not to assure profits, it is to set rates at such a level that the public is assured an adequate supply of power at the fairest possible price. In order to attain this goal, it is essential that the utility have the opportunity to earn a reasonable amount of profit. A financially unsound utility will not serve the goals of either the rate-regulating body or the public.

The Commission has never asserted that rate regulators assure that utilities devote a specific portion of their funds to nuclear safety. The commenter apparently believes that the NRC's past financial reviews monitored nuclear power plant expenditures to see where the funds went. As explained above, this has never been the case. The Commission examined a utility before a license was granted to assure that, in the Commission's judgment, the utility had sufficient *total* revenues to operate a facility. The Commission did not examine the books of facilities to assure that monies requested for safety expenditures were so spent, but relied on its inspection and enforcement program to ensure that each facility met all NRC safety regulations. This will remain unchanged under the present rule.

The Commission believes that the record of this rulemaking demonstrates generically that the rate process assures that funds needed for safe operation will be made available to regulated electric utilities. Since obtaining such assurance was the sole objective of the financial qualification rule the Commission concludes that, other than in exceptional cases, no case-by-case litigation of the financial qualification of such applicants is warranted. Some of the other concerns expressed by commenters, including concerns that available funds will not be spent properly for safety matters, will continue to be separately addressed by the Commission, either in pre-licensing reviews or in the post-licensing inspection and enforcement program.

C. Public Comment on the Link Between Financial Qualification Review and Assurance of Safety

The Commission also sought comment on the question of whether financial qualification reviews could be eliminated completely at both the construction permit and operating license stages on the basis that there is no connection between these reviews and health and safety. Nearly all commenters who wrote in support of the proposed rule also indicated that they would support such a proposal. The commenters relied on the fact that no correlation has been shown between financial qualification and safety, that the Commission's financial reviews are essentially predictive and cannot adequately anticipate what the actual costs of operation will be, that financial incentives do not favor reducing the operating and maintenance costs associated with nuclear power reactors, that the consequences of a serious incident at a nuclear power plant would be too severe to warrant cutting corners on safety, that the financial condition of a utility improves once a facility is operating and that the NRC's inspection and enforcement program is a more efficient method of insuring safety. One commenter* enclosed a May 31, 1984 report from National Economic Research Associates, Inc. (NERA) which studied investor-owned utilities and concluded that an examination of the financial condition of electric utilities at the operating license stage is unlikely to produce any useful insight into the safe operation of nuclear power reactors. NERA based its conclusions upon an analysis of the financial incentives associated with operating nuclear power reactors, the relationship between nuclear-related operation and maintenance costs and measures of utility financial health, and general considerations of what happens to the financial condition of electric utilities when a new reactor begins operation. NERA concluded that incentives to cut costs and increase profits by cutting corners are outweighed by the financial risks of cutting corners, that there is a greater chance of shutdown and removal from the rate base in case of accident in a nuclear facility, and that it is easier for a utility that operates both nuclear and non-nuclear facilities to

*This commenter also suggested that, if the Commission were to reinstate financial qualification review for construction permit applicants, it should also reinstate that portion of Appendix C to 10 CFR Part 50 which provides guidance for such review. The Commission has done so in this final rule.

reduce non-nuclear rather than nuclear costs.

Most commenters who opposed the Commission's rule chose not to comment separately on this issue. Those that did cited the allegedly poor financial health of some utilities, but failed to identify any link between the NRC's financial qualification reviews and the safe operation of facilities owned by these utilities.[5]

The NRC has found strong indications in the public comments, and especially in the NERA report, that a rule eliminating financial qualification review at all stages of the licensing proceeding is supportable, at least for regulated utilities, on the basis of the lack of any proven link between financial qualification review and safety given the Commission's long experience in regulating utilities, the data in the NERA report, and the further public comment. Since the Commission has had less experience with and less information on the subject of non-utility licensees, and since the Commission has indicated that it would not issue a final rule on this basis without a further opportunity for public comment, the Commission is not relying on this premise for the current rule. The Commission does, however, note that there is some support for the proposition that, for electric utilities, there is no connection between the Commission's financial qualification review and safe operation of a facility.

III. Additional Information That Can Be Required

By this rule, the Commission does not intend to waive or relinquish its residual authority under Section 182a of the Atomic Energy Act of 1954, as amended, 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. An exception to or waiver from the rule precluding consideration of financial qualification in an operating license proceeding will be made if, pursuant to 10 CFR 2.758, special circumstances are shown. For example, such an exception to permit financial qualification review for an operating license applicant might be appropriate where a threshold showing is made that, in a particular case, the local public utility commission will not allow the total cost of operating the facility to be recovered through rates.

IV. Practical Impacts

The rule will, in normal circumstances, reduce the time and effort which the applicants, licensees, the NRC staff and NRC adjudicatory boards devote to reviewing the applicant's or licensee's financial qualifications in comparison to the rule which existed before March 31, 1982. The rule eliminates staff review at the operating license stage in cases where the applicant is an electric utility presumed to be able to finance activities to be authorized under the license. The rule will be applied both to ongoing and future licensing reviews and proceedings and to past proceedings subject to the remanded rule. The rationale for the rule is in effect a generic determination that regulated or self-regulating public utilities are financially qualified to operate nuclear power plants. Accordingly, this rule amounts to a generic resolution of financial qualification issues that may be pending in operating license proceedings involving electric utilities. 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. Under NEPA, the issue is not whether the applicant can demonstrate reasonable assurance of covering certain projected costs, but 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.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, OMB Approval No. 3150-0011.

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 the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Classified information, Confidential information, Freedom of information, Hazardous materials, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Fire prevention, Classified information, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of 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 NRC is adopting the following amendments to 10 CFR Parts 2 and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 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). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.300-2.309 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133). Section 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (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) and

[5] It is important to note that, if such a link could be identified for any given facility, the Commission would not be precluded from examining the financial qualification of that facility under 10 CFR 2.758. See Section IV, *infra*.

5 U.S.C. 552. Section 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.4, paragraph (s) is revised 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 (c)(4) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(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 qualification 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 utilization facility of the type described in § 50.21(b) of § 50.22;

* * * * *

4. In Appendix A to Part 2, paragraph (b)(4) of Section VIII is 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

* * * * *

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 qualification shall not be considered by the board if the applicant is an electric utility seeking a license to operate a 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 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). 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). Section 50.100–50.102 also 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, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 50.2, paragraph (x) is revised 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 cost 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 shall state:

* * * * *

(f) Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought. As applicable, the following should be provided:

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

(2) 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 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 is required in an application for an initial license.

(3) 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) Its financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and

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

(4) 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 qualification is necessary for an electric utility applicant for an operating license for a utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

9. In § 50.57, footnote 1 is set out for the convenience of the reader, and paragraph (a)(4) is revised to read as follows:

§ 50.57 Issuance of operating license.[1]

(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 qualification is necessary for an electric utility applicant for an operating license for a utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

10. Appendix C to Part 50 is added as follows:

Appendix C—A Guide for the Financial Data and Related Information Required To Establish Financial Qualifications for Facility Construction Permits

General Information

This appendix is intended to apprise applicants for licenses to construct production or utilization facilities of the types described in § 50.21(b) or § 50.22, or testing facilities, of the general kinds of financial data and other related information that will demonstrate the financial qualification of the applicant to carry out the activities for which the permit is sought. The kind and depth of information described in this guide is not intended to be a rigid 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 the proposed facility.

It is important to observe also that both § 50.33(f) and this appendix distinguish between applicants which are established organizations and those which are newly-formed entities organized primarily for the purpose of engaging in the activity for which the permit is sought. Those in the former category will normally have a history of operating experience and be able to submit financial statements reflecting the financial results of past operations. With respect, 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 qualification, 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, 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 sharing of the power from the facility by two or more electrical generating companies.

Applicants 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.

I. Applicants Which Are Established Organizations

A. Applications for construction permits

1. *Estimate of construction costs.* For electric utilities, each applicant's estimate of the total cost 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 [1]	$
Total estimated cost	$

[1] Section 2.790 of 10 CFR Part 2 and § 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 Energy Regulatory Commission or an explanation given as to any departure 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. *Source of construction funds.* The application should include a brief statement of the applicant's general financial plant for financing the cost of the facility, identifying the source or sources upon which the applicant relies for the necessary construction funds, e.g., internal sources such as undistributed earnings and depreciation accruals, or external sources such as borrowings.

3. *Applicant's financial statements.* The application should also include the applicant's latest published annual financial report, together with any current interim financial statements that are pertinent. If an annual financial 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 be furnished.

II. Applicants Which Are Newly Formed Entities

A. Applications for construction permits

1. *Estimate of construction costs.* The information that will normally be required of applicants which are newly formed entities will not differ in scope from that required of established organizations. Accordingly, applicants should submit estimates as described above for established organizations.

2. *Source of construction funds.* The application should specifically identify the source or sources upon which the applicant relies 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 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 be set forth in the application. This information should 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.

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, however, include in its application a statement of its

[1] The Commission may issue a provisional operating license pursuant to the regulation in this part in effect on March 30, 1970, for any facility for which a notice of hearing on an application for a provisional operating license or a notice of proposed issuance of a provisional operating license has been published on or before that date.

assets, liabilities, and capital structure as of the date of the application.

11. 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. * * *

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

* * * * *

The additional views of Commissioner Asselstine and the separate statement of Chairman Palladino follow.

Additional Views of Commissioner Asselstine

A majority of the Commission has concluded that in its consideration of an application for an operating license for a nuclear power plant, no review whatsoever of the utility applicant's financial qualifications to operate the facility is required and, other than in exceptional cases, no case-by-case litigation of the financial qualification of the applicant is warranted. The majority's conclusion appears to be based upon the judgment that the record of this rulemaking demonstrates generically that the rate process assures that funds needed for safe plant operation will be made available to regulated electric utilities.

Although the NRC should not return to performing the same types of financial qualification reviews required by the old rule, the majority has gone too far in excluding virtually all consideration of the utility applicant's financial qualification in nuclear power plant operating license proceedings. Such a sweeping exclusion is contrary to the requirements of the Atomic Energy Act, is unsupported by the facts and is unjustified on the basis of this rulemaking record.

Section 182 a. of the Atomic Energy Act of 1954 requires that each application for an operating license for a nuclear power plant "specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant . . . as the Commission may deem appropriate for the license." The plain language of the statute appears to require consideration of the financial qualification of the applicant as part of the Commission's decision on whether to issue an operating license for a nuclear power plant. Thus, at least absent clear and convincing evidence that the financial qualification of a regulated utility is wholly irrelevant to safe plant operation in all cases (evidence that is not to be found in this rulemaking record), the Commission is required to perform some type of financial qualification review and to consider financial qualification issues as part of the licensing proceeding for a nuclear power plant.

The majority points to a survey conducted by the National Association of Regulatory Utility Commissions (NARUC) which shows that public utility commissioners and publicly-owned utilities have the authority to set rates in such a way that sufficient revenues to meet NRC safety requirements are assured. However, the fact that regulated electric utilities can generally expect to be compensated for the cost of safety requirements does not provide a basis for eliminating all consideration of financial qualification issues in operating license proceedings.

As the NARUC study itself confirms, public utility commissions typically do not specify that funds to cover safety requirements must be spent on nuclear plant operations. Nor are nuclear plant operating costs the only element considered by public utility commissions in deciding on the amount of revenues to be provided to the utility. As some commenters noted, utility rate commission decisions can include elements such as rate base phase-ins or disallowances that affect the overall rate level allowed for the utility. Such factors, together with the cost of ongoing construction programs that frequently are not included in the rate base, inevitably require the utility to make choices regarding the allocation of rate returns among such competing priorities as nuclear and non-nuclear plant operating costs, plant improvements aimed at increasing plant capacity factors, increasingly costly construction programs and providing an adequate rate of return to investors. The difficult financial choices faced by some utilities, particularly smaller utilities with larger ongoing construction programs, are widely documented. There is simply no basis in this rulemaking record for concluding that in all instances a utility will resolve the conflicting financial priorities in favor of allocating full funding to nuclear plant operation. In the absence of such evidence, the fact that utility commissions typically provide rate relief sufficient to cover the cost of safety requirements does not, by itself, justify the total exclusion of all financial qualification issues and the elimination of all financial qualification reviews.

The majority also argues its conclusion is supported by the agency's long experience in regulating utilities, and that present inspection and enforcement efforts are a sufficient means for identifying and correcting financially motivated safety problems. The majority, although professing not to rely on this point, further attempts to bolster its position by asserting that there is some support for the proposition that there is no link between financial qualification reviews and safety. In support of this assertion, the majority points to a study by the National Economic Research Associates, Inc. (NERA), which finds that the financial risks to the utility associated with the consequences of a nuclear accident outweigh any financial gains that might be achieved by cutting corners on safety.

Although these arguments are superficially attractive, they are not supported by the facts. Unfortunately, financial considerations can and do lead to safety weaknesses in some instances. There have been instances, some recently, in which regulated utility licensees with operating power reactors have emphasized maximizing electricity generation over safety, have been unwilling to build a strong, technically capable nuclear plant operations organization, or have failed to move aggressively to satisfy new NRC safety requirements. In many instances, financial considerations appear to be a significant contributor to these utility decisions. Some of these safety weaknesses have been of continuing duration, and not all have been identified or corrected by our inspection and enforcement program. These examples would appear to indicate clearly that financial considerations can and do affect safety in some instances. Given this experience, I see no basis for the majority's conclusion that the NRC need not examine a utility's financial capability to operate the plant or consider financial qualification issues in our licensing proceedings. Nor does the Commission's reliance on 10 CFR 2.758 provide an effective means for identifying and correcting safety weaknesses caused by financial considerations. As it would apply here, 10 CFR 2.758 would require that a member of the public first identify the financial qualification issue, bring it to the Commission's attention and demonstrate that special circumstances

exist in the case before *any* consideration of the issue will be permitted. This very restricted opportunity to raise the issue imposes a heavy burden on the party seeking to raise the issue, and the Commission's new rule, for all practical purposes, can be expected to eliminate virtually all consideration of financial qualification issues by the NRC staff and in operating license hearings. Finally, the majority argues that the elimination of the Commission's existing financial qualification reviews is justified on the ground that those reviews fail to consider how a utility actually spends the revenues provided by public utility commissions. However, if present financial qualification reviews are ineffective, that is an argument for restructuring, rather than eliminating, them.

Rather than seeking to eliminate virtually all consideration of financial qualification issues, the Commission should be restructuring its rules and regulatory programs to ensure that its financial qualification reviews identify any financial considerations that can affect the safety of plant operations. Such a restructured program could focus on five elements. The first element would be a required certification by the relevant public utility commission or commissions to the effect that revenues necessary to support the plant's prudent operation will be forthcoming. Such a certification would satisfy the purpose served by the Commission's previous financial qualification reviews. At the same time, unwillingness on the part of a utility commission to provide such a certification would indicate a potential financial qualification problem requiring further NRC review.

The second element would be to restore the opportunity for participants in NRC licensing proceedings to raise and litigate financial qualification issues, including questions regarding the utility's ability or unwillingness to apply the funds needed for safe plant operation, and questions involving regulatory or contractual commitments that could lead to unsafe operation. The third element would be to permit members of the public to raise financial qualification issues regarding operating plants and to have those issues considered pursuant to 10 CFR 2.206.

The fourth element would consist of an augmented NRC inspection program to consider the possible connection between financial considerations and identified plant safety weaknesses. The final element would consist of a required showing by the utility of how it intends to assure the availability of funds to pay the cost of plant decommissioning. This final element may best be considered as part of the Commission's decommissioning rule, but the Commission could commit to requiring such a showing now. It is worth noting that the majority was unwilling to indicate at this time a commitment to address the financial qualification issue for decommissioning in a subsequent decommissioning rule. Taken together, these elements or a restructured program would reflect the role and knowledge of the public utility commissions and would eliminate unnecessary duplication of effort. At the same time, this program would recognize the link between financial considerations and safety, and would provide for more effective consideration of financial qualification issues. Such an approach would demonstrate the Commission's desire to deal effectively with safety issues. Unfortunately, the Commission seems more inclined simply to avoid them.

Separate Statement of Chairman Palladino

Commissioner Asselstine's criticism of the Commission's approach is not justified by either the facts or the law in this rulemaking.

First, as the Court of Appeals observed in its decision remanding the Commission's March 1982 rule, even if the Atomic Energy Act of 1954 were interpreted as requiring financial qualification reviews, it would not preclude appropriate generalized criteria that would render some case-by-case evaluations unnecessary. *NECNP v. NRC*, Slip op. at 5 (February 7, 1984). The Commission rested its proposal of April 2, 1984 to eliminate financial qualifications reviews on the generic conclusion that the rate process assures for regulated electric utilities (or those utilities able to set their own rates) the funds needed for safe operation of a nuclear power facility. In the statement accompanying today's final rule, the Commission notes its belief that the rulemaking record supports this generic conclusion. It also notes that 10 CFR 2.758 provides an avenue for possible consideration of financial qualifications in a particular case where the generic conclusion appears not to apply. The Act does not require more.

Second, the Commission's financial qualification reviews have not, in the past, addressed questions about how a utility resolves conflicting financial priorities. The statement accompanying the final rule makes clear that the Commission relies on a number of regulatory means, including post-licensing inspection and enforcement, to protect against financial choices by a utility that are adverse to safe nuclear plant operation.

Third, I would point out that while the Commission requested comment on the question whether financial qualification reviews might be eliminated completely on the ground that no link has been shown between financial qualification reviews and assurance of safety, it did not base its proposed rule on that ground. The final rule's accompanying statement notes support for, but it does not seek to justify the final rule on, that ground. The accompanying statement also notes that, if a link can be identified in a particular case between financial qualification review and safe plant operation it could be addressed under 10 CFR 2.758.

Fourth, the matter of decommissioning costs is the subject of separate generic consideration within NRC. The fact that the Commission has chosen not to tie decommissioning costs to this financial qualifications rulemaking should not be interpreted as an indication that the Commission believes that decommissioning funding is unimportant to public health and safety. Rather, it recognizes that any action on decommissioning is more appropriate in the context of a separate generic rulemaking. See 47 F.R. 13750 (March 31, 1982).

Dated at Washington, DC this 6th day of September 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-24085 Filed 9-11-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 4

[Docket No. 84-30]

Description of Office, Procedures, and Public Information

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency has completed the reorganization of its field offices. This final rule changes the word "Regional" to "District" throughout the regulation to reflect the new title of the reorganized offices. The final rule also clarifies language relating to exceptions to required disclosure of information to make the regulation conform to existing

and other papers shall be filed with the presiding Administrative Law Judge, with proof of service, within such time periods as are established by the presiding Administrative Law Judge.

14. As soon as possible, but in no event later than October 12, 1984, the presiding Administrative Law Judge shall: (1) Prepare a recommended decision on the basis of the record containing recommended findings of fact and conclusions of law on all issues raised by the parties; (2) certify to the Secretary of Labor such recommended decision and the entire record of the proceedings; and (3) forward a copy of the recommended decision to each party of record and amicus curiae. No conclusions of law regarding either the constitutionality of any Federal or State statute or the constitutionality of interpretation thereof shall be made.

15. The parties of record may file with the presiding Administrative Law Judge a Statement of Exceptions, with proof of service, setting forth any exceptions they may have to the recommended decision, within seven (7) days after service by mail of the recommended decision. Upon receipt of any Statement of Exceptions, the presiding Administrative Law Judge shall promptly forward such Statement of Exceptions and proof of service to the Secretary of Labor, noting whether the statement was timely filed.

16. (a) Any briefs or other papers intended to be filed of record with the presiding Administrative Law Judge in the proceedings shall be mailed or otherwise delivered to the office of the presiding Administrative Law Judge. Unless otherwise ordered, such documents shall be deemed to be filed on the date they are postmarked if transmitted by the United States Postal Service, and shall be deemed to be filed on the date received in the Office of Administrative Law Judges if transmitted by any other means.

(b) An original and one copy of any brief or other paper shall be filed with the presiding Administrative Law Judge and shall be accepted subject to timely filing with proof of sufficient service upon the opposing parties.

(c) If the last day of a time limit prescribed by these Rules or established by the presiding Administrative Law Judge falls on a Saturday, Sunday, or a federal holiday, the time limit shall be extended to the next official business day.

17. Following the certification in accordance with Rule 14 above, and consideration of any Statement of exceptions filed and served in accordance with Rules 15 and 16, the Secretary of Labor shall render a decision in the matter, in writing, and shall forward the decision together with the record to the Chief Administrative Law Judge, and shall forward copies of his decision to the Governor of the State, to each party of record, and to any amicus curiae authorized to participate in the proceedings.

[FR Doc. 84-24039 Filed 9-11-84; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

Office for Partnership Advisory Panel (Locals Test Program Section); Meeting

The meeting of the Office for Partnership Advisory Panel (Locals Test Program Section) which is scheduled to meet on September 12, 1984, from 10:00 a.m.–5:00 p.m.; on September 13, 1984, from 9:00 a.m.–5:00 p.m.; and on September 14, 1984 from 9:00 a.m.–1:00 p.m. is hereby amended to meet on September 12, 1984, from 10:00 a.m.–5:00 p.m.; on September 13, 1984, from 9:30 a.m.–5:00 p.m.; and on September 14, 1984, from 9:30 a.m.–1:00 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC.

The portions of this meeting which are scheduled to be open to the public on September 12, from 10:00 a.m.–11:00 a.m.; on September 13, from 2:30 p.m.–5:00 p.m.; and on September 14, from 9:00 a.m.–1:00 p.m. are hereby amended to be open on September 12, from 10:00 a.m.–2:15 p.m.; on September 13, from 3:45–5:00 p.m.; and on September 14, from 9:30 a.m.–1:00 p.m. to discuss policy, guidelines, and report on Locals Advocacy Project.

The remaining sessions of this meeting scheduled to meet on September 12, from 11:15 a.m.–5:00 p.m. and on September 13, from 9:30 a.m.–2:30 p.m. are now changed to meet September 12, from 2:15–5:00 p.m. and on September 13, from 9:30 a.m.–3:45 p.m. which are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Futher information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-24025 Filed 9-11-84; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Accident Investigation; Hearing

The National Transportation Safety Board will hold an Accident Investigation Hearing in the matter of the head-on collision of National Railroad Passenger Corporation (Amtrak) trains Nos. 168 and 151 at Astoria, Queens, New York, New York, on July 23, 1984, beginning at 9 a.m. on Tuesday, October 2, 1984, in the Georgian Room of the New York Penta Hotel, Seventh Avenue and 33rd Street, New York, New York 10001.

Dated: September 7, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84-24053 Filed 9-11-84; 8:45 am]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Gessar II; Meeting Postponed

The ACRS Subcommittee on GESSAR II scheduled for September 20 and 21, 1984, at the Bayview Plaza Holiday Inn (213/399–9344), 530 Pico Blvd., Santa Monica, CA has been postponed. Notice of this meeting was published Wednesday, September 5, 1984 (49 FR 35002).

Dated: September 7, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-24067 Filed 9-11-84; 8:45 am]
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Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Radiological Effects; Meeting

The ACRS Subcommittee on Reactor Radiological Effects will hold a meeting on Thursday, September 27 and Friday, September 28, 1984, Room 1046, 1717 H

Street, NW, Washington, DC. The entire meeting will be open to public attendance. Sessions of the subject meeting will be held from 8:30 a.m. until the conclusion of business each day.

On Thursday, the Subcommittee will (1) continue its discussion of NRC Staff proposed amendments to 10 CFR Part 20 to specify residual radioactive contamination limits, and (2) be briefed by and hold discussions with the NRC Staff on the status of the following Generic Safety Issues:

1. (Worker) Radiation Protection Plans,
2. Reactor Coolant Activity Limits for Operating Reactors,
3. Control Room Habitability,
4. Iodine Spiking, and
5. Radiation Source Control.

On Friday, the Subcommittee will be briefed by and hold discussions with (1) the NRC Staff on their evaluation of TMI-2 cleanup endpoint alternatives, and (2) DOE on their systematic approach regarding reactor safety and radiation protection research.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of DOE, the NRC Staff, Subcommittee consultants, and other interested persons regarding the previously named topics.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one to two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated September 7, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-24086 Filed 9-11-84; 8:45 am]

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Revised Inspection and Enforcement Manual Chapter Proprietary Review of Inspection Reports; Availability

The Office of Inspection and Enforcement has revised its manual chapter concerning the procedures for conducting proprietary review of inspection reports.

The revision of this manual chapter includes guidance that terminates the practice of routinely sending inspection reports to licensees for review for proprietary information prior to placing them in the Public Document Room (PDR). This revision places responsibility upon the licensee to inform inspectors that material provided in the course of an inspection is proprietary and upon the NRC staff to conduct proprietary reviews. In cases of significant doubt, on a case-by-case basis, the manual chapter calls for the licensee to be requested to conduct a proprietary review of final inspection reports prior to their placement in the Public Document Room.

For further information contact: Mr. Edwin F. Fox, Jr., Program Support and Analysis Staff, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 (telephone (301) 492-4905).

A copy of this notice and the manual chapter is being sent to all NRC licensees. A copy of the manual chapter is being placed in NRC's Public Document Room, 1717 H Street, NW, Washington, DC and in each Local Public Document Room (LPDR) throughout the United States for review by interested persons. Photo copies of the manual chapter may be obtained from the Public Document Room, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at 7 cents a page by calling (202) 634-3273.

Dated at Bethesda, MD, this 4th day of September 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

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PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Power Planning Council

Northwest Conservation and Electric Power Plan; Proposed Amendments, Hearings, and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of proposed amendments, hearings, and opportunity to comment.

SUMMARY: On April 27, 1983, the Council adopted a final Northwest Conservation and Electric Power Plan (Power Plan). The Council is now proposing to amend two portions of that plan. This notice describes the proposed amendments, provides information on how to obtain additional information, and outlines the process for submitting written comments and participating in the hearings.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments closes at 5 p.m. October 12, 1984. Public hearings on the proposed amendments will be held in:

- Portland, Oregon at 9:00 a.m., October 4, 1984 in the Portland Building, 1120 SW., 5th Avenue, Meeting Room C on Second Floor.
- Seattle, Washington at 9:00 a.m., October 3, 1984 in Seattle Center, Mercer Forum VI (below Opera House).
- Boise, Idaho at 9:00 a.m., October 5, 1984 at the Owyhee Plaza, Encore Room, 11th and Main.
- Missoula, Montana at 9 a.m., October 1, 1984 at the Village Red Lion Motor Inn, 100 Madison.

Copies of the proposed amendments can be obtained by contacting Michele Sterling at the address and phone numbers given below.

Instructions for Oral Comment at Hearings

1. Requests for time slots must be made at least three days prior to the hearings to Ruth Curtis, Information Coordinator, at the Council's central office, 700 SW., Taylor, Suite 200, Portland, Oregon 97205 or (503) 222-5161 (toll free 1-800-222-3355 out of state or 1-800-452-2324 in Oregon).
2. Those who do not sign up for time slots will be permitted to testify as time permits.
3. Hearings should be used to summarize written comments. Comments should not be read.
4. Five copies of written testimony should be submitted to the Council.