

RESPONSE SHEET

TO: Brooke P. Clark, Secretary
FROM: Chairman Hanson
SUBJECT: SECY-18-0026: Proposed Rule: Financial
Qualifications Requirements for Reactor Licensing
(RIN 3150-AJ43)

Approved _____ Disapproved X Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached X None _____

Signature
Christopher T. Hanson

Date 07/13/2022

Entered in STARS

Yes ✓

No

Chairman Hanson's Views on SECY-18-0026 "Proposed Rule: Financial Qualifications Requirements for Reactor Licensing"

I appreciate the staff's efforts to develop the recommendations in this paper in 2018. In considering the changing landscape of nuclear power, however, we must address whether the direction in SRM—SECY-13-0124 to conform reactor financial qualifications requirements to 10 CFR Part 70 standards remains the most appropriate path forward. After delving into the history of the rule, considering the most efficient use of agency resources, and exploring opportunities to solicit updated feedback from stakeholders I believe the best course of action is to disapprove continuance of this independent rulemaking effort and seek public engagement in other ongoing agency rulemaking activities.

Efforts to seek public engagement on financial qualifications standards in Part 50 started with the concern that current requirements are too difficult for non-rate-regulated entities to meet. Under 10 CFR 50.33(f) and as reflected in Appendix C to 10 CFR Part 50, an applicant for an initial license under Part 50 must demonstrate that it possesses or has "reasonable assurance" that it can obtain the funds necessary to construct or operate the facility. Applicants under Part 52 are required to meet the standards for financial qualification in Part 50. In contrast, an application under 10 CFR Part 70 must show that "the applicant appears to be financially qualified to engage in the proposed activities" to receive a license. In theory, the proposed rule would make the standards in Part 50 equivalent to those in Part 70, thereby allowing the agency to issue licenses with conditions to applicants that may have insufficient funding at the outset of the license application review.

Frankly, I have concerns about whether a license condition is the appropriate regulatory solution for this problem. However, my main concern is rooted in what I consider to be a gap in information. While transitioning the standards in Part 50 to match those in Part 70 would be responsive to past stakeholder comments received on this issue, those comments are now almost a decade old. Indeed, the original paper submitted by the staff presenting the adoption of the Part 70 approach is from 2013. Since 2013, we have seen an increased interest in advanced reactor technologies and the agency is currently developing a new technology-inclusive licensing framework—Part 53.

Before proceeding with a resource intensive rulemaking process, it is important to hear updated feedback from stakeholders about current challenges and concerns regarding the agency's financial qualification requirements. It is also important to consider this issue in the context of our development of Part 53. To this end, the staff should discontinue this rulemaking as a standalone effort but pursue the underlying issues elsewhere. The staff should address financial qualifications during the development of Part 53. Separately, the Commission can direct the staff to engage in outreach regarding these issues in the ongoing Part 50/52 licensing process alignment rulemaking effort as part of the proposed rule process.

Specifically, to engage stakeholders in this discussion, the staff should include the following language in the *Federal Register* Notice related to the ongoing Part 53 rulemaking effort:

Utility new reactor applicants are exempt under 10 CFR 50.33(f) from financial qualification reviews because they are generically presumed to be financially qualified for construction and operations. In contrast, merchant power plant new reactor applicants are required under 10 CFR 50.33(f)(2) to submit information that demonstrates they possess or have reasonable assurance of obtaining the funds necessary to cover estimated construction and operating costs for the period of the license. A "merchant power plant applicant" is a non-rate-regulated entity (e.g., a nonutility) that engages in the business of production, manufacturing, generating, buying, aggregating, marketing, or brokering electricity for sale at wholesale or for retail

sale to the public. Over the past decade, the agency has heard some concerns about the challenges that merchant power plant applicants face in meeting the current financial qualification requirements.

Does this standard continue to pose challenges for merchant power plant applicants? If so, please provide a detailed explanation of these challenges.

How likely are new reactor applicants to fall into the category of merchant power plant applicants?

Should Parts 50 and 52 have the same financial qualification requirements as Part 53? Why or why not?

Are there categories of merchant new reactor applicants for which a Part 70 “appears to be financially qualified” standard would be more appropriate?¹ If so, please explain what types of applicants should be able to use the Part 70 financial qualification standard and what distinguishes these applicants from ones that should not be able to use this standard.

If a Part 70 financial qualification standard were to apply to a category of merchant new reactor applicants, should it also apply to pre-construction license transfer applications for these reactors? Why or why not?

Is there another standard the agency should consider for financial qualification of merchant new reactor applicants?

¹ 10 C.F.R. § 70.23(a)(5).