

April 13, 2001

COMMISSION VOTING RECORD

DECISION SECY-00-0225

ITEM:

TITLE: PROPOSED RULEMAKING PLAN ON SUBMISSION OF FINANCIAL INFORMATION FOR APPLICATIONS TO RENEW OR EXTEND THE TERM OF AN OPERATING LICENSE FOR POWER REACTORS (10 CFR PART 50.33(f)(2))

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum ([SRM](#)) of April 13, 2001.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

/RA/

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR

VOTING SUMMARY - SECY-00-0225

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	3/23/01
COMR. DICUS	X					4/3/01
COMR. DIAZ	X				X	4/5/01
COMR. McGAFFIGAN	X				X	3/27/01
COMR. MERRIFIELD	X				X	3/30/01

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 13, 2001.

Commissioner Comments on SECY-00-0225

Chairman Meserve

This matter concerns the need to resolve the inconsistency between [10 C.F.R. § 50.33\(f\)\(2\)](#) and [10 C.F.R. § 54.29](#). The first

section requires an applicant for license renewal other than an electric utility to file financial information as part of the renewal application, whereas the criteria for decision set out in the second section do not require a Commission decision on financial qualifications in order to issue a renewed operating license. Staff offers the two obvious alternatives: modify the decision criteria to require a finding of financial qualification (Option 1) or elimination of the requirement to submit the financial information (Option 2). The staff recommends Option 2.

In its memorandum to the Commission of March 14, 2001, the staff provided supplemental information in support of its recommendation. Staff notes that at the time of initial licensing it performs a financial review that becomes part of the licensing basis and which continues into the term of the renewed license. During the term of the license, the NRC has a general oversight process to detect a licensee's financial deterioration and can initiate a request of financial qualifications information (under 10 C.F.R. §50.33(f)(4)) if necessary. Given these circumstances, the staff asserts that the current regulatory process provides reasonable assurance that the deteriorating financial condition of a licensee can be detected in sufficient time as to preclude adverse consequences. See Supplemental Information, at 2 (Mar. 14, 2001).⁽¹⁾ Given these facts, there is nothing associated with license renewal, which by itself simply authorizes continued operation by the current licensee, that warrants additional financial review. By contrast, if a license is transferred to a non-electric utility, a financial review of the transferee is needed because the transferee has not necessarily been subject to previous financial scrutiny.

In light of these considerations, I concur with the staff's recommendation that we proceed with a proposed rule to revise 10 C.F.R. §50.33(f)(2) to remove the requirement that entities other than electric utilities submit financial qualifications information as part of the license renewal process. In developing the statement of considerations for the proposed rule, the staff should clearly articulate the rationale for the rule change. The staff should also discuss why it is retaining the requirement for financial qualifications information for nonpower reactors applying for license renewal.

Commissioner Diaz

I approve the staff's recommendation to proceed with proposed rulemaking to revise 10 CFR § 50.33(f)(2), in accordance with option 2 in the proposed rulemaking plan. I conclude that this approach is reasonable since the most appropriate time for the staff to obtain and review information on the financial qualifications of a licensee whose status changes to one other than that of an "electric utility" is at the time of the change in status. Such a change is likely to occur during the term of the license, without any association to license renewal. As staff proceeds, it needs to clearly identify the methods and bases for its review of a licensee's financial qualifications in the various circumstances in which a licensee may no longer meet the definition of an "electricity utility" under the NRC's regulatory framework.

Commissioner McGaffigan

After receiving the March 14, 2001 supplemental information memorandum from the EDO, I vote to approve the staff's recommendation to proceed with rulemaking to revise 10 CFR §50.33(f)(2) in accordance with the rulemaking plan, as supplemented by the March 14, 2001 memorandum. I agree with the Chairman's discussion of the considerations involved in the proposed rule change. I also agree with the Chairman that in developing the Statement of Considerations for the proposed rule, the staff needs to articulate clearly the rationale for the rule change. This rationale should include a complete description of the existing regulatory processes to monitor and evaluate changes in financial qualifications for current licensees.

Commissioner Merrifield

I **approve** the staff's recommendation to proceed with rulemaking to revise 10 CFR §50.33(f)(2) in accordance with the rulemaking plan presented in SECY-00-0225. Based on my review of the existing regulatory processes to monitor and evaluate changes in financial qualifications for reactor licensees, I agree with the staff that the license renewal process, in and of itself, does not warrant a separate financial review at the time of a renewal application. Because license renewal has no effect on the ownership of a facility, which is the focus of any financial review, license renewal should not trigger the need for a new NRC look at financial qualifications. Thus, I agree with the staff that 10 CFR §50.33(f)(2) should be revised to remove the requirement for nuclear power plant renewal applicants, that are entities other than electric utilities, to submit financial qualifications information. As the staff proceeds with the rulemaking process, I strongly encourage them to focus greater attention on providing a more thorough description of the processes the agency utilizes to monitor and assess the financial qualifications of licensees and a more clearly articulated basis for the proposed rule change.

With regard to the processes the agency utilizes to monitor and assess the financial qualifications of licensees, the staff notes in its March 14, 2001 memorandum that the NRC performs financial qualifications reviews at the time of initial licensing, and these reviews form part of the licensing basis that continues for the term of the initial license and for any license renewal period. As discussed in NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance", the NRC continues to conduct general follow-up reviews of all licensees by screening trade and financial press reports, as well as other sources of information. Also, [NRC Administrative Letter 96-02](#), "Licensee Responsibilities Related To Financial Qualifications" served to reinforce to licensees that corporate restructuring which changes the "electric utility" status of a power reactor licensee or otherwise alters the basis under which a licensee received an operating license should be brought to the NRC's attention in a timely fashion. It is important to note that should the staff ever have concerns or questions regarding the financial qualifications of a licensee, 10 CFR §50.33(f)(4) provides that the NRC may seek additional or more detailed information respecting a licensee's financial arrangements and status of funds. The staff performs financial qualifications reviews when holders of nuclear power plant operating licenses apply under [10 CFR §50.80](#) for a direct transfer of a license. There is also a separate and distinct review process for indirect transfers under 10 CFR §50.80. Detailed staff guidance associated with the conduct of these reviews, including explicit guidance related to evaluating the

financial qualifications of non-electric-utilities, is provided in NUREG-1577. These and other provisions of the NRC's regulatory framework associated with financial qualifications lead the staff to conclude that this framework is robust. I agree.

There is one remote and narrowly focused aspect of our regulatory framework that I believe the staff should consider further. The Commission's "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry", (62 FR 44071, Published 8/19/97, Effective 10/20/97), states "the NRC's existing regulatory framework under 10 CFR 50.33(f) requires financial qualifications reviews for those licensees that no longer meet the definition of "electric utility" at the operating license (OL) stage." As I stated above, NRC Administrative Letter 96-02 served to reinforce to licensees that corporate restructuring which changes the "electric utility" status of a power reactor licensee should be brought to the NRC's attention in a timely fashion. However, contrary to the Policy Statement, I cannot find explicit reference in NUREG-1577 or other guidance documents which indicates that the staff conducts financial qualifications reviews in cases where corporate restructuring results in a licensee transitioning from an "electric utility" to a non-"electric utility", but no license transfer pursuant to 10 CFR §50.80 occurs. In discussions, the staff indicates that such a transition without a license transfer is unlikely, and in fact, to date, every such transition has been accompanied by a direct or indirect license transfer. I agree with the staff in their assessment about the likelihood of such an occurrence. However, as electric industry deregulation proceeds throughout the United States, it is not clear to me that such an occurrence can be ruled out entirely. Therefore, at the very least, I believe it would be prudent for the staff to assess whether the NRC's financial qualifications review process is adequate to ensure that the stated provision of the Commission's Policy Statement is being followed.

1. **See also** "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry," 62 Fed. Reg. 44071, 44073 ("[T]he NRC continues to believe that its primary tool for evaluating and ensuring safe operations at its licensed facilities is through its inspection and enforcement programs.").