

October 24, 1997

SECY-97-253

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: POLICY OPTIONS FOR NUCLEAR POWER REACTOR FINANCIAL
QUALIFICATIONS IN RESPONSE TO RESTRUCTURING OF THE
ELECTRIC UTILITY INDUSTRY

PURPOSE:

To provide the Commission with a discussion of policy options regarding the financial qualifications of its power reactor licensees to operate their facilities safely in light of restructuring activities. Such activities have occurred and appear to be accelerating in anticipation of the economic deregulation of the electric power industry.

BACKGROUND:

In February 1996, the staff developed and the Commission approved an "Action Plan for NRC Response to Electric Utility Industry Restructuring and Economic Deregulation." Task 6 of this action plan included an evaluation of the adequacy of the requirements for license transfer applications under 10 CFR 50.80 in light of restructuring. The Commission issued a staff requirements memorandum dated January 25, 1996, in which it directed the staff to "perform a comprehensive review of existing rules to determine if the ongoing restructuring of utilities presents a challenge to the effectiveness of regulations...."

This paper discusses only policy options with respect to licensee financial qualifications for operating nuclear power plants. The

Commission recently published a proposed rule on financial assurance requirements for decommissioning nuclear power reactors. The staff believes that this paper and the decommissioning funding assurance rule complement each other, addressing different aspects of the same issue and, together, meet the requirements of the Commission's memorandum of January 25, 1996.

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DISCUSSION:

Traditionally, electric utilities licensed by the NRC to operate power reactors have generally been large, vertically integrated companies with substantial generation, transmission, distribution, and other assets. In return for having an exclusive franchise to provide electric power in a defined geographic area, electric utilities have had the rates that they charge their customers regulated by the State Public Utility Commissions (PUCs) and the Federal Energy Regulatory Commission (FERC). Such rate regulation has been almost exclusively "cost-of-service" regulation, by which electric utilities recover from their customers the prudently incurred costs of providing electric service, plus a return on the equity capital used to build their plants. One of the presumptions underlying this approach has been the "natural monopoly" status of the electric power industry, viz., that electric utility customers are captive customers that have essentially no alternative source for their electricity services. The general efficacy of this system in providing necessary funds for power reactor licensees to operate and decommission their nuclear plants safely was the NRC's primary rationale in eliminating, in 1984, financial qualifications reviews for operating license (OL) applicants which were "electric utilities" as defined in 10 CFR 50.2 (49 FR 35747; September 12, 1984).

The NRC maintained the distinction between electric utility and other licensees when it issued its decommissioning rulemaking in 1988 (53 FR 24018, June 27, 1988). In that rulemaking, the NRC differentiated between its electric utility licensees and other licensees by allowing electric utility licensees to collect decommissioning funds over the estimated life of the reactor, rather than requiring the prepayment of such funds or requiring guarantees for all unfunded balances.

The NRC also has viewed the determination of licensee financial qualifications for plant operations as being of secondary importance as a means of ensuring the protection of public health and safety. As stated in the 1984 financial qualifications rule, "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" (49 FR 35747, at 35749). While the staff continues to believe that this assumption is generally true, events, as described below, at Maine Yankee suggest that financial stress can potentially affect operational safety at operating plants. Nevertheless, decommissioning funding assurance has been of more concern because, once a plant shuts down, it loses its source of revenue with which to fund decommissioning.

With the advent of restructuring, some of the basic assumptions underlying the NRC's financial qualifications regulations are being reconsidered.¹ Many electricity generators may lose PUC or

¹ The loss of "natural monopoly" status by generators, including nuclear generators, may affect the assurance that power reactor licensees will continue to be able to recover the costs of electricity that they produce. This status was one of the underlying assumptions of the 1984 definition of (Footnote 1 continued on next page)
(Footnote 1 continued from previous page)
"electric utility." In many rate deregulation scenarios being considered, electricity customers will eventually be able to select their electricity supplier. Some nuclear plant generators may not be able to compete with lower-cost generators, and may no longer have an assured customer base, even in cases where the nuclear plant remains subject to some form of rate regulation by its State PUC. However, many of the State proposals for nuclear plants would maintain regulation of nuclear licensees, and tie them to the entities that will continue to have regulated transmission and distribution functions. (These functions will remain "natural monopolies.") Because of dedicated revenue streams for decommissioning, and to a lesser extent, operations of nuclear plants that many States have proposed, the staff believes that the proposed modification to the definition of "electric utility" will remain workable and will be able to provide adequate assurance of power reactor licensees' ability to provide reasonable assurance that funds for operations and decommissioning will be available. If future changes in economic deregulation suggest that the definition is no longer effective, the staff would propose to change it at that time. However, in the interim, given the current proposals for

FERC cost-based rate regulation.

Further, electricity rates set by competition in a free market may not provide the same degree of assurance of adequate funds for safe operation and decommissioning as traditional cost-of-service ratemaking. Even in the absence of full rate deregulation, some companies will be under increasing cost pressure. For example, the "Independent Safety Assessment of Maine Yankee Atomic Power Company" (NRC Staff Report; October 1996) concluded: "Economic pressure to be a low-cost energy producer has limited available resources to address corrective actions and some plant improvement upgrades."

To address the above concerns, the staff is proposing three options for the Commission's consideration. In conjunction with Option 1, the staff has prepared the enclosed draft revisions and additions to parts of the NRC's regulations. Because of the uncertainty surrounding future deregulation, the staff believes that whichever option is chosen will likely be an interim step and may need to be modified as the thrust of deregulation becomes clearer. The staff also notes that this paper does not address the issue of the potential impact of the NRC's hearing process on the timely transfer of licenses under 10 CFR 50.80. This issue will be evaluated separately.

Option 1: Revise the regulations in 10 CFR 50.33(f), 50.80, and Appendix C to Part 50 and add a new section, § 50.67, to provide enhanced, continuing NRC evaluation of post-licensing financial qualifications of

economic deregulation and the continuing uncertainty of many State approaches, the staff believes that the NRC should continue to distinguish between electric utilities and other power reactor licensees as discussed in Option 1 below.

licensees to operate their nuclear power plants safely.

Summary:

The staff has developed the attached draft rulemaking as a basis for discussion. The rulemaking would amend the NRC's financial qualifications regulations and guidance in §§ 50.33(f), 50.80, and Appendix C to Part 50 and would add a new section, § 50.67, to provide for post-licensing financial qualifications reviews for licensees of plants that no longer meet the NRC definition of "electric utility." This option would clarify the financial qualifications that would need to be demonstrated by those that no longer met the NRC definition of "electric utility." The principal features of this option are summarized as follows:

(1) The rulemaking would preserve the distinction between electric utility and non-electric-utility licensees, and to that extent would continue existing NRC policy. For those that do not meet the NRC definition of electric utility, the staff proposes to develop an ongoing requirement that licensees demonstrate financial qualifications either by bond ratings (which, the staff believes, are an effective substitute for financial qualifications reviews) or, as an equivalent measure of financial qualifications, by a combination of operational cost and revenue projections and a liquidity test to demonstrate that operational expenses would be covered during an extended outage or other adverse conditions.

Although the new standard would set minimum requirements for financial qualifications for licensees that no longer are "electric utilities" under the NRC's definition in § 50.2, it is not proposed as a substitute for the Commission's primary reliance on inspection and other regulatory programs to ensure safety of operations. Rather, the requirements would provide additional data for NRC to determine whether particular plants needed additional regulatory oversight. In a

worst-case situation, where the licensee was unable to demonstrate that it was able to continue to operate safely, the NRC could order the licensee to shut down its plant(s).²

(2) All licensees, both electric utilities and non-electric utilities, would be required to inform the NRC whenever they propose to transfer more than 10 percent of their assets in any 12-month period to an unlicensed affiliate. This provision basically codifies the NRC staff's current practice with respect to reviewing holding companies but would also expand the practice to cover situations where divestiture of assets occurs in the absence of a license transfer action under § 50.80. Although the staff believes that continued rate regulator review of electric utilities normally would render additional NRC financial qualifications review unnecessary, asset divestiture can precede full deregulation. This requirement would alert the NRC that a licensee might lose electric utility status or that a licensee, notwithstanding continued rate regulation, might become financially stressed because of reduced resources. The staff believes that being notified of such asset transfers would give the NRC a basis to request further information or to take appropriate regulatory action. Although the staff believes that the NRC may not have authority to require approval in advance of proposed asset transfers, the staff does not believe that formal NRC approval of such transfers would be necessary, as long as the staff had access to information on proposed transfers.

² The Office of Analysis and Evaluation of Operational Data (AEOD) has developed and is evaluating the use of financial indicators for the Senior Management Meeting process. The requirements discussed under Option 1 would be separate from these financial indicators. NRR and AEOD will coordinate the development of any new requirements and indicators to optimize data use and to minimize duplication.

(3) The staff also believes that licensees should be required to inform the NRC whenever their rate regulators or other State bodies take significant actions that would reduce rate regulatory oversight. Although the staff is confident that it will learn of deregulation initiatives that affect specific licensees, this requirement would appropriately place the primary reporting burden with the licensee and would provide an additional accurate and current source of information on the status of its licensees.

(4) The staff proposes to make minor modifications to 10 CFR 50.80 to clarify that its provisions apply to direct and indirect transfers of control of a license, licensee, or right under a license, such as formation of a holding company, change of non-owner responsibility for operations where financial issues are relevant, and not only to transfers of the license itself. This approach would essentially maintain the approach that the staff currently uses.

(5) The staff proposes to develop a new section, § 50.67, and to expand Appendix C to Part 50 to cover financial qualifications reviews of non-electric-utility licensees over the licensing and operating life of the facility. Although provisions applicable to initial licensing are unlikely to be used in the near term, they are provided to make Appendix C applicable to the entire licensing process. The staff also believes that it is appropriate to provide more detailed guidance on financial qualifications for the entire operating life of a plant.

(6) The staff also proposes to slightly modify Section 50.33(f) and Appendix C to clarify what will be required from any future applicants for initial licensing. Ambiguities in the drafting language have led to conflicting interpretations.

Attachment 1 provides a line-in line-out version of the changes to Part 50 that would be proposed if Option 1 were chosen.

Option 1 Benefits:

Option 1 essentially extends the NRC's current regulatory approach to cover post-OL reviews for non-electric-utility licensees. Licensees that continue to meet the NRC's definition of "electric utility" would not be subject to post-CP reviews. Current regulations in § 50.33(f) require all CP applicants and OL applicants that do not meet the definition of electric utility in

§ 50.2 to provide information sufficient to demonstrate that they are financially qualified to construct and operate the facilities that they are proposing. This option would require the same information required at the OL review stage to be submitted periodically throughout a facility's operating life by non-electric utility licensees. Because of the likely advent of deregulation and full competition among electricity generators, the staff does not believe that a one-time "snapshot" of a non-electric utility applicant's financial ability to operate safely at the time of its OL application necessarily provides meaningful information about its financial qualifications in the future. The staff believes that the proposed requirements would provide a systematic method for obtaining information that the NRC could use as part of its overall framework to evaluate a licensee's ability to continue to operate its facility safely.

The staff proposes as part of Option 1 to maintain the distinction between electric utility licensees as defined in § 50.2 and non-electric utility licensees, with the latter required to demonstrate financial qualifications throughout facility life. The staff does not believe that the logic underlying the 1984 financial qualifications rulemaking has, to date, changed significantly.

Some, perhaps many, licensees will continue to be subject to rate

regulators that will allow recovery of nuclear plant costs plus a reasonable return on capital from ratepayers. As explained in footnote 1 above, notwithstanding the loss of monopoly status and assured ratepayer purchases that such status implies, the staff believes that many PUCs will continue to provide either direct rate regulation of nuclear plants or will develop effective substitutes such as dedicated line or wires charges that will provide a reasonably assured source of funds for operations and decommissioning. This approach has worked well for many years and should continue to provide the reasonable assurance of financial qualifications that the NRC concluded was demonstrated in the 1984 rulemaking. For States that do not allow adequate recovery of safety-related costs, the NRC will be able to take specific action as provided under the current rule and as enhanced under Option 1. Finally, adoption of Option 1 would reiterate the NRC's concerns about the possible effects that rate deregulation and disaggregation resulting from various restructuring actions involving power reactor licensees could have on the protection of public health and safety. (See the Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry. (62 FR 44071; August 19, 1997))

Option 1 Costs:

Additional NRC resources in the amount of up to 1 FTE might be required if the Commission adopts Option 1. However, because Option 1 would continue to exempt

electric utilities from reporting post-CP financial qualifications on a regular basis, the impact on the NRC could be lower depending on how many licensees remained electric utilities. Also, as discussed under Option 2, which would continue current regulatory requirements, the NRC would continue to conduct ad hoc reviews of licensees through the §§ 50.80 and 50.33(f)(4) processes and will continue to monitor State activities to help make general determinations of whether licensees in States sponsoring deregulation initiatives will remain electric utilities. Thus, it is not clear that Option 1 would necessarily entail more NRC staff resources than under the current regulations.

Each affected licensee would expend approximately 2 staff-weeks of effort annually to prepare and submit to the NRC the information required in Option 1. Assuming that 50 licensees would lose electric utility status, the staff estimates total industry impact at approximately 2 staff-years annually. Additionally, the NRC would have to justify the increased information collection burdens of these requirements to the Office of Management and Budget.

One potential difficulty with Option 1 concerns the remedies the NRC has available if the NRC determines that a licensee is no longer financially qualified. Ordering a licensee to obtain additional funds for safety expenditures may not be feasible. Likewise, enforcement action involving the imposition of civil penalties would likely be counterproductive. The staff believes that such financial information should be used instead to target plants that need additional regulatory oversight to determine whether a particular licensee's financial situation is actually adversely impacting safety. Upon completion of a safety assessment, NRC would have the options of letting the licensee continue to operate, restricting operations, or requiring the licensee to shut down. The NRC expects, either in a regulated or deregulated environment, that licensees' financial incentives in minimizing the adverse financial impacts of poor plant performance will normally operate

to provide adequate safety expenditures. However, in those situations where such incentives do not work as expected, the NRC will act to protect public health and safety.

Option 2: Do not change the NRC's existing regulatory framework.

Summary:

The NRC's existing regulatory framework under § 50.33(f)(4) allows the NRC to seek additional financial qualifications information that it believes is necessary for the protection of public health and safety. This would include information from licensees or States that meet the definition of "electric utility" when particular health and safety issues arise. This approach would involve continuing the process of ad hoc financial qualifications reviews under § 50.80 license transfers and other reviews in response to reports in the trade press and other sources of information about restructuring and deregulation actions affecting specific licensees.

Option 2 Benefits:

Because of its authority under its existing regulations, the NRC can evaluate those licensee restructuring and deregulation activities that constitute a license transfer under § 50.80. Also, by not imposing additional reporting burdens on the general population of licensees, the NRC can minimize additional impacts on licensees. Finally, Option 2 would require no new rulemaking costs.

Option 2 Costs:

Option 2 would not require the additional collection of information that would be obtained by promulgating Option 1. As such, the NRC might not have a systematic source of information on licensee restructuring actions.

Accordingly, the risk that the NRC would fail to be aware of a licensee restructuring action would be greater under Option 2 than under Option 1. Additionally, Option 2 would not establish clear requirements for post-licensing financial qualifications reviews of non-electric-utility licensees and would not clarify in the NRC's regulations the current staff practice of treating changes in control of licenses through changes in control of licensees as subject to § 50.80 consent.

Option 3: Expand financial qualifications reviews at the OL and post-OL stages to include all power reactor licensees, including those that are electric utilities, and clarify the scope of Section 50.80 transfer provisions.

Summary:

Option 3 would expand the OL and post-OL financial qualifications reviews that have been proposed in Option 1 to include electric utility licensees as well as non-electric-utility licensees. This option would end the NRC's 13-year-old distinction between its electric utility licensees and other licensees, which, the staff believes, remains valid, notwithstanding current State rate deregulation initiatives. In addition, Section 184 of the Atomic Energy Act relating to license transfers could be interpreted as clearly applying to changes in control of licensees by virtue of changes in control of licensees through the acquisition of a controlling percentage of the voting stock of a licensee. If the Commission were to choose Option 3, § 50.80 would be amended to implement this interpretation by establishing a threshold³ level of transfers of voting stock that would

³ A threshold of 25 percent may be used, based on U.S. statutes applicable to the domestic banking industry.

require application by the proposed acquirer and NRC consent under 10 CFR 50.80.

Attachment 2 contains draft amended language for changes to § 50.80, which although it is included under Option 3, could be adopted separately from other changes discussed in this option. Separate amendatory language for Option 3 to cover the elimination of the distinction between "electric utilities" and non-electric utilities has not been developed at this point.

Option 3 Benefits:

By establishing on-going financial qualifications reviews for all licensees, including electric utilities, the NRC would be in a better position to identify and address the situation in which a rate regulator or other factors adversely affect the financial ability of a utility to operate its nuclear plant safely. However, because rate regulation has provided adequate funds for safe operations for the great majority of power reactor licensees and various State proposals to address the

Alternatively, a 10 percent threshold could be chosen, which is derived from the Public Utilities Holding Company Act (PUHCA). That Act reads in part:

(7) "Holding company" means --

(A) any company which directly or indirectly owns, controls or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B) of this paragraph, unless the Commission, as hereinafter provided, by order declares such company not to be a holding company ... (PUHCA, Chapter 2C, 15 § 79b)

However, as PUHCA also recognizes, an entity could obtain effective control of a company with control of stock below whatever threshold level is chosen.

unique funding aspects of nuclear power plant operations and decommissioning, the staff expects such situations to be rare. Further, the NRC can use its existing authority under either current regulations or those that might be adopted under Option 1 to evaluate special situations where a licensee remains an "electric utility" but has financial problems significant enough to affect the protection of public health and safety.

Option 3 Costs:

Such a broad-based increase in NRC's financial qualifications reviews would impact both NRC and licensee resources. In addition to Option 1 burdens, which, at least for NRC resources, are unlikely to exceed 1 FTE, Option 3 could require additional annual resource burdens of 2 to 3 NRC FTE and 2 to 3 licensee FTE total. This burden could possibly be even greater if additional resources from OGC are required. However, although "clarification" of a threshold for voting stock acquisitions may lead to an increase of § 50.80 applications being filed, the staff does not believe that electric utilities are often subject to these kinds of stock acquisitions.⁴ Finally, establishing a low

⁴ The staff believes that, on balance, the systematic collection of financial qualifications information from "electric utility" licensees over the remaining operating lives of their facilities is not justified, given that such collection is likely to provide only a marginal increase in the protection of the public health and safety. There does not appear to be any compelling reason at this time to change the NRC's long-established approach to defer to rate regulators to establish adequate levels of operations and decommissioning funding for those that are (or will continue to be) under their jurisdiction. Further, the imposition of a threshold level of transfers of voting stock provided under Option 3 could have implications relating to the prohibition in Section 103d. and 104d. of the Atomic Energy Act of 1954, as amended, of foreign ownership, domination, or control of licenses for commercial nuclear power plants.

threshold could increase the time it would take applicant to obtain NRC approval.

RESOURCES:

If the Commission decides to proceed with Option 1 or Option 3, the staff will prepare a *Federal Register* notice for the proposed rule and a regulatory analysis to support the rule. Resources to conduct the rulemaking effort for Option 1 are included in the FY 1997 and FY 1998 budgets as provided in the action plan on electric utility restructuring and deregulation. Resources needed to implement Option 1, if adopted, are expected to be accommodated through a shift in the financial qualifications casework load among existing staff. If the Commission selects Option 3, additional resources will be needed as outlined above. If the Commission adopts Option 2, no additional resources will be required.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed the policy options for information technology and information management implications and concurs in it. However, if a proposed rule is developed, a clearance package for the

In addition, both application of financial qualifications requirements on "electric utility" licensees throughout remaining reactor operating life and imposition of a threshold have potentially significant backfit implications that would need to be reviewed by the Committee to Review Generic Requirements. Such a requirement could be perceived as requiring substantial additional review and approval requirements on licensees. The staff does not believe that a backfit could be justified given the marginal benefits to the protection of public health and safety that would result from adoption of Option 3.

information collection requirements must be submitted to the Office of Management and Budget for review no later than the date the proposed rule is published in the Federal Register.

RECOMMENDATION:

That the Commission approve Option 1 as a basis for the staff to proceed with a proposed rulemaking as outlined in Attachment 1.

L. Joseph Callan
Executive Director
for Operations

Attachments: 1. Amendments to § 50.33(f), § 50.80, and Appendix C to Part 50,
and new § 50.67 as described in Options 1.
2. Amendments to § 50.80 as described in Option 3

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OPTION 1

10 CFR 50.33(f)

(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 qualifications of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought. As applicable, the following shall 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. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. 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 ~~that the newly-formed entity~~ it has or proposes to have with its stockholders, ~~bondholders,~~ or owners;

(ii) ~~The newly-formed entity's~~ its financial ability to meet any contractual obligation ~~which the newly-formed entity has incurred or proposes to incur~~ 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 qualifications.

(4) Notwithstanding the exception described in this section for electric utility applicants for licenses to operate utilization facilities, the Commission may request an established entity or a newly formed entity that is an electric utility as defined in Section 50.2 of this part 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 decommission the facility.

§ 50.67 Financial Qualifications of Licensees.

(a) Each power reactor licensee that is an electric utility as defined in § 50.2 shall notify the Commission in writing if rates are no longer fully based upon cost-of-service regulation of the operation or decommissioning of its licensed nuclear power plant

as established by its rate regulator(s) (i.e., either a State public utility commission or the Federal Energy Regulatory Commission). Such notification shall be submitted within 15 days following the time such licensee becomes aware that cost-of-service regulation of the operation or decommissioning of such licensee's nuclear power plant will be reduced or eliminated by its rate regulator(s). If the change deregulates the rates of the licensed facility, the licensee shall indicate the steps it is taking to demonstrate financial qualifications for operation and decommissioning of the licensed facility that are required for non-electric-utility licensees.

(b) Each licensee of a production or utilization facility under this part, including any licensee that is defined as an electric utility in § 50.2, shall give the NRC prior written notification of a transfer to a nonlicensed entity, no later than 90 days before such transfer, of more than 10 percent of such licensee's total assets in any 12-month period as listed in such licensee's books of account.

(c) Each non-electric-utility entity licensed to operate a utilization facility of the type described in § 50.21(b) and § 50.22 shall submit

information on its financial qualification to operate its facility as described in Appendix C to this Part.

(d) Notwithstanding the exception described in § 50.33(f) of this part for electric utility applicants for licenses to operate utilization facilities, the Commission may request any licensee to submit 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 decommission the facility.

10 CFR 50.80

Transfer of Licenses

(a) No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license **or right** to any person, unless the Commission shall give its consent in writing.

(b) An application for **written consent under this section** ~~transfer of a license~~ shall include as much of the information described in §§ 50.33 and 50.34 of this Part with respect to the identity and technical and financial qualifications of the ~~proposed transferee~~ **licensee following the proposed transfer** as would be required by those sections if the application were for an initial license and if the license ~~to be issued~~ **subject to the transfer** is a class 103 license, the information required by § 50.33a. The Commission may require additional information such

as data respecting proposed safeguards against hazards from radioactive materials and the ~~applicant's~~ qualifications **of the licensee following the proposed transfer** to protect against such hazards. The application shall include also a statement of the purposes for which the transfer ~~of the license~~ is requested, the nature of the transaction necessitating or making desirable the transfer ~~of the license~~, and an agreement to limit access to Restricted Data pursuant to § 50.37. The Commission may require any person who submits an application ~~for license~~ pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility involved.

(c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for **approval of** the transfer ~~of a license~~, if the Commission determines:

(1) That the ~~proposed transferee~~ **licensee following the proposed transfer** is qualified to be ~~the holder of~~ the licensee;

and

(2) That **the** transfer ~~of the license~~ is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

APPENDIX C TO PART 50 -- ~~A GUIDE FOR THE FINANCIAL DATA AND~~
~~RELATED INFORMATION REQUIRED TO ESTABLISH OR MAINTAIN FINANCIAL~~
~~QUALIFICATIONS FOR FACILITY CONSTRUCTION PERMITS, OPERATING~~
~~LICENSES, AND POST-OPERATING LICENSE REVIEWS~~

GENERAL INFORMATION

This appendix is intended to apprise **construction permit and operating license** applicants **and licensees** for 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 **or licensee** to carry out the activities **under the permit or license** ~~for which the permit is sought~~. The kind and depth of information described in this ~~guide~~ **appendix** ~~is~~ **are** not intended to be a rigid and absolute requirements. In some instances, additional material may be needed. In any case, the applicant **or licensee** should include information other than that specified, if such information is pertinent to establishing the applicant's **or licensee's** financial ability to construct **and operate** 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 **or license** 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 **of its financial arrangements or financial plans** will generally be necessary. For this reason, **the this** appendix describes separately the scope of information to be included in applications by each of these two classes of applicants. **Further, as provided in § 50.33(f), an applicant for an operating license or a licensee is not subject to a financial qualifications review if it can demonstrate to the satisfaction of the Commission that it remains an "electric utility" as defined in § 50.2.**

In determining an applicant's **or licensee's** financial qualifications, the Commission will require the minimum amount of information necessary for that purpose. No special forms are

prescribed for submitting the information. In many cases, the financial information usually contained in current annual financial reports, including summary data of prior years, will be sufficient for the Commission's needs. The Commission reserves the right, however, to require additional financial information at the construction permit, **operating license stage, or post-operating license stages**, 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. **In cases where an applicant applies for a combined construction permit and operating license under 10 CFR Part 52, information required with respect to the applicant's financial qualifications to construct and operate its facility shall be submitted jointly with the Part 52 application.**

Applicants **and licensees** are encouraged to consult with the Commission with respect to any questions they may have relating to the requirements of the Commission's regulations or the information set forth in this appendix.

I. APPLICATIONS FOR CONSTRUCTION PERMITS

A. Applicants that are Established Organizations

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 core⁵.....
\$.

Total estimated cost.....
\$.

If the fuel is to be acquired by lease or other arrangement

⁵ Section 2.790 of 10 CFR Part 2 indicates the circumstances under which information submitted by applicants may be withheld from public disclosure.

than purchase, the application ~~should~~ **shall** so state. The items to be included in these categories ~~should~~ **shall** 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 **must be** 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~~ **shall**, 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~~ **shall** include a brief statement of the applicant's general financial plan for financing the cost of the facility, identifying the source or sources upon which the applicant relies **or intends to rely** for the necessary construction funds, e.g., internal sources such as undistributed earnings and depreciation accruals **or other cash flow sources**, or external sources such as borrowings.

3. *Applicant's financial statements.* The application ~~should~~ **shall** 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 statements covering the latest complete accounting year together with all pertinent notes thereto and certification by a public accountant ~~should~~ **shall** be furnished.

B. Applicants that are Newly-formed Entities

1. *Estimate of construction costs.* The information that will normally be required of applicants that are newly-formed entities ~~will not differ in scope from that required of established organizations~~ **may require additional detail than that required of established organizations.** Accordingly, applicants ~~should~~ **shall** submit estimates as described above for established organizations **and, in addition, provide such additional information on estimates of construction costs as the NRC may request.**

2. *Source of construction funds.* **The application shall include a brief statement of the applicant's general financial**

plan for financing the cost of the facility. The application should ~~shall~~ identify the source or sources upon which the applicant relies ~~or intends to rely~~ for the funds necessary to pay the cost of constructing the facility, and the amount ~~planned~~ to be obtained from each. ~~With respect to each source,~~ The application ~~should~~ ~~shall~~ describe in detail the applicant's legal and financial relationships, ~~if established,~~ with its stockholders, corporate affiliates, or others (such as financial institutions) upon which the applicant is relying ~~or intends to rely~~ for financial assistance. If the sources of funds ~~to be~~ 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~~ ~~make any current or future capital contributions~~ to the applicant ~~should~~ ~~shall~~ 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 ~~shall~~ be submitted, ~~if available.~~

As noted earlier in this appendix, an applicant that is a newly-formed entity will normally not be in a position to submit the usual types of balance sheets and income statements

reflecting the results of prior operations. The applicant ~~should~~ **shall**, however, include in its application a statement of its assets, liabilities, and capital structure as of the date of the application.

II. APPLICATIONS FOR OPERATING LICENSES

A. *Applicants that are "Electric Utilities"*

Applicants for operating licenses, whether established or newly-formed entities, that are electric utilities as defined in § 50.2 are exempt from further demonstration of financial qualifications. However, such applicants must demonstrate that they, in fact, meet the definition of electric utility.

B. *Applicants that are not "Electric Utilities"*

1. Applicants for operating licenses, whether established or newly-formed entities, that do not meet the Commission's definition of electric utility in § 50.2, must demonstrate that they are financially qualified to operate the facility. If the facility for which the operating license is being sought is, or will be, owned or operated by more than one entity, each entity

will be considered as an applicant required to meet the provisions of this appendix. Such joint applicants may apportion responsibility for the costs of operation as they see fit; however, such costs should be clearly delineated in a joint operating agreement, joint ownership agreement, or other such agreement, and the agreement must be submitted as part of the application.

2. The information to be submitted shall initially consist of either of the following:

(a) Documentation of investment-grade bond ratings⁶ for the previous three years from two widely accepted rating organizations such as Moody's or Standard and Poors; or

(b) Projections of total annual operating costs (i.e., operation, maintenance, capital additions, and fuel) and sources of revenues for the 5 years following projected start of operation, coupled with a liquid asset test. Total projected revenue from the plant must exceed total operating costs for that plant for the 5-year period. Projections of sources of revenue may include either projections of market prices of electricity or documentation of long-term contracts (i.e., 5 years or longer),

⁶ An "Investment-grade" bond rating means a bond that has received a rating of at least "Baa3" from Moody's, or "BBB-" from Standard and Poors, or the equivalent from another bond rating service.

with the prices projected or established in the contracts for electricity sales exceeding the projected total costs of producing the electricity. Applicants must also demonstrate that they have liquid assets (i.e., cash or cash equivalents) that are sufficient to cover 1 year of the projected total operating costs of the nuclear plant.

III. POST-OPERATING LICENSE FINANCIAL QUALIFICATIONS

A. Licensees that are "Electric Utilities"

Licensees of nuclear power plants, whether established or newly-formed entities, that are electric utilities as defined in § 50.2 are generally exempt from further demonstration of financial qualifications. However, such applicants must, pursuant to § 50.67(a), inform the NRC when their rate regulators reduce or eliminate cost-of-service rate regulation.⁷

⁷ [Note: The NRC has recently proposed changes to the definition of "electric utility." Among other things, the changes would allow a nuclear power plant license applicant or licensee to qualify as an electric utility for the purposes of decommissioning funding assurance if that applicant's or licensee's rate regulator allows recovery of decommissioning costs through some non-bypassable charge to ratepayers. Additionally, entities whose rates cover only a portion of their

B. Licensees that are not "Electric Utilities"

1. As required in § 50.67(c), licensees that do not meet the definition of electric utility must demonstrate continued financial qualifications over the term of the license. If the licensed facility is owned or operated by more than one entity, each entity will be considered as a licensee required to meet the provisions of this section. Such joint licensees shall indicate how plant operating costs will be provided for in any joint operating agreement, joint ownership agreement, or other such agreement. Any changes to such agreement(s) must be submitted to the NRC within 30 days after such changes become effective.

2. The demonstration of continued financial qualification shall consist of either of the following:

(a) Maintenance of an investment-grade bond rating from two widely accepted rating organizations such as Moody's or

decommissioning costs would be considered "electric utilities" only for that portion of their decommissioning costs. However, applicants or licensees would be considered electric utilities for the purpose of the requirements of financial qualifications to operate a nuclear power reactor under § 50.33(f) of this part and this appendix only if all of the prudently incurred costs (as determined by the licensee's ratemaking authority) associated with operation of the nuclear power plant were allowed to be recovered either through traditional cost-of-service rate regulation or through non-bypassable charges for operation costs that are similar to those levied for decommissioning cost recovery.]

Standard and Poors. If a licensee no longer maintains an investment-grade rating from two widely accepted rating organizations, it must submit information as described in paragraph (b), below.

(b) Each year beginning 1 year from [insert the effective date of this rule], the licensee(s) shall submit projections of total annual operating costs (i.e., operation, maintenance, capital additions, and fuel) and sources of revenues for the next 5 years. Total revenues must exceed total operating costs for each 5-year period. Projections of sources of revenue may include either projections of market prices of electricity or documentation of long-term contracts (i.e., 5 years or longer), with the prices established in the contracts for electricity sales exceeding the costs of producing such electricity. In addition, each year beginning 1 year from [insert the effective date of this rule], the licensee(s) shall demonstrate that liquid assets (i.e., cash or cash equivalents) are sufficient to cover 1 year of the nuclear plant's total operating and maintenance and fuel costs. These requirements will be effective until the facility permanently ceases operation pursuant to § 50.82 of this part.

IV. APPLICATIONS FOR LICENSE TRANSFERS UNDER 10 CFR 50.80

Each licensee or applicant for a license, whether an "electric utility" as defined in § 50.2, or a non-electric utility, is required to obtain prior written consent from the NRC if it intends to take any action that would constitute a transfer of a license or transfer of control of a license under § 50.80. The NRC, in connection with any proposed merger, acquisition, or divestiture involving a license, or formation of a holding company, will perform a threshold review to determine whether the proposed action would require the NRC's written consent under § 50.80. The NRC will consider an action that would result in a new entity obtaining the power to control a nuclear power plant license or a licensee as a license transfer under § 50.80 of this part requiring NRC consent. The NRC considers that the formation of a new holding company over an existing licensee or over a licensee's parent company or companies constitutes a transfer of control pursuant to § 50.80. A licensee must report to the NRC any proposed divestiture of assets exceeding 10 percent in any 12-month period of such licensee's books of account pursuant to § 50.67(b).

V III. ANNUAL FINANCIAL STATEMENT

Each holder of a construction permit or operating license

for a production or utilization facility of a type described in § 50.21(b), or § 50.22, or a testing facility, is required by § 50.71(b) to file its annual financial report with the Commission at the time of issuance thereof. This requirement does not apply to licensees or holders of construction permits for medical and research reactors.

VI IV. ADDITIONAL INFORMATION

The Commission may, from time to time, request the applicant, whether an established organization or newly-formed entity, **or licensee** to submit additional or more detailed information respecting its financial arrangements and the status of funds if such information is deemed necessary to enable the Commission to determine an applicant's **or licensee's** financial qualifications for **or under** the license.

OPTION 3

10 CFR 50.80

Transfer of Licenses

(a) No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license **or right** to any person, unless the Commission shall give its consent in writing. **"Transfer of control of the license or right" for the purpose of this section shall include, but not be limited to (in the case of an existing corporate licensee) acquiring (1) control with power to vote of 25 percent or more of the outstanding voting securities of the licensee, or (2) the power to control in any manner the election of a majority of the board of directors of the licensee.**

(b) An application for **written consent under this section** ~~transfer of a license~~ shall include as much of the information described in §§ 50.33 and 50.34 of this Part with respect to the identity and technical and financial qualifications of the ~~proposed transferee~~ **licensee following the proposed transfer** as would be required by those sections if the application were for

an initial license and if the license ~~to be issued~~ **subject to the transfer** is a class 103 license, the information required by § 50.33a. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the ~~applicant's~~ **qualifications of the licensee following the proposed transfer** to protect against such hazards. The application shall include also a statement of the purposes for which the transfer ~~of the license~~ is requested, the nature of the transaction necessitating or making desirable the transfer ~~of the license~~, and an agreement to limit access to Restricted Data pursuant to § 50.37. The Commission may require any person who submits an application ~~for license~~ pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility involved.

(c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for **approval of** the transfer ~~of a license~~, if the Commission

determines:

(1) That the ~~proposed transferee~~ **licensee following the proposed transfer** is qualified to be ~~the holder of~~ the licensee;

and

(2) That **the** ~~transfer of the license~~ is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.