

RULEMAKING ISSUE NOTATION VOTE

November 30, 2000

SECY-00-0225

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: 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 §50.33(f)(2))

PURPOSE:

To obtain Commission approval to proceed with rulemaking to revise 10 CFR §50.33(f)(2) in accordance with the attached rulemaking plan, in order to remove the requirement for nuclear power plant renewal applicants, who are entities other than electric utilities, to submit financial qualifications information.

DISCUSSION:

Section 50.33(f)(2) requires an entity, other than an electric utility, who seeks a renewal of its operating license for a nuclear power plant, to submit as part of its application the same financial information required for an application for an initial license. This provision, which was adopted in 1984 (49 FR 35747, Sept. 12, 1984), was based upon the premise that where an applicant is an electric utility, the ratemaking process assures that funds needed for safe operation will be made available.

In 1991, the Commission adopted the License Renewal Rule, 10 CFR Part 54 (56 FR 64943, Dec. 13, 1991), which established the requirements for an applicant seeking to renew a nuclear power plant operating license. Part 54 identifies the information that must be submitted to the NRC for review and describes the standards for issuing a renewed license.

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The statement of considerations (SOC) for the 1991 rule stated that the basis of the 1984 rulemaking for exclusion of financial qualifications finding for electric utilities applies to the period of extended operation covered by a renewed license, and “extended” the 1984 rule’s finding to applicants for renewal of operating licenses. *Id.* at 64968 (first and second columns). Thus, the 1991 rule left unchanged the Section 50.33(f)(2) requirement that applicants for license renewal that are entities other than electric utilities submit financial qualifications information as part of the renewal application. However, through apparent oversight, Section 54.29 does not require a Commission finding of financial qualifications for renewal applicants who are entities other than electric utilities in order to issue a renewed operating license. This oversight was not corrected in the 1995 revision of Part 54, inasmuch as the rulemaking was not directed at addressing the matter of financial qualifications but rather was focused on clarifying the scope of structures, systems, and components (SSCs) subject to an aging review, and the nature of that review. *Refer to* 60 FR 22491 (May 8, 1995).

Since the 1995 rulemaking, the NRC has received requests for license renewals and has granted two renewed licenses to electric utilities. However, because of ongoing deregulation in the electricity sector of the economy, new entities other than electric utilities are expected to be formed which will hold operating licenses for nuclear power plants. Some of these entities may decide to extend the life of their nuclear power plants through the license renewal process, and under the current rule would be required to submit financial qualifications information under Section 50.33(f)(2). However, as discussed above, a finding of financial qualification need not be made under Section 54.29 in order to issue the renewed license. Therefore, the Commission needs to address and resolve by appropriate rulemaking the matter of financial qualifications for entities other than electric utilities seeking renewal of nuclear power plant operating licenses.

There appear to be two alternatives for resolution of the inconsistency between Sections 50.33(f)(2) and 54.29. The first alternative would be for the Commission to adopt a conforming change to Section 54.29 to add a finding of financial qualifications for entities other than an electric utility seeking renewal. This alternative could be adopted by direct final rulemaking, inasmuch as the rulemaking would correct Part 54 to be consistent with the 1984 financial qualifications rulemaking. However, this alternative would require entities other than electric utilities seeking license renewal to submit information on financial qualifications and the Commission to make a finding of financial qualifications. Both a renewal applicant who is an entity other than an electric utility and the NRC would be required to expend resources on the subject of financial qualifications.

The second alternative would be for the Commission to modify Section 50.33(f) to remove the requirement for submission of financial qualifications information. This would not only remove the need for entities other than electric utilities to submit financial qualifications information, it would also provide the basis for the NRC not making a financial qualifications finding for such entities in connection with renewal of such entities’ operating licenses. It would, therefore, place entities other than electric utilities on the same footing as electric utilities with respect to the license renewal process.

The staff recommends that the Commission adopt the second alternative. Since neither the 1984 financial qualifications rule, nor the 1991 or 1995 License Renewal rulemakings contained a basis for not making a financial qualifications finding for entities other than electric utilities, a rulemaking implementing this alternative would have to provide the basis for forgoing the financial qualifications finding for entities other than electric utilities. There are a number of

bases that could be relied upon in the rulemaking. These will be evaluated and discussed as part of the proposed rulemaking package. In addition, the rule would not affect, and would continue the existing requirement in Section 50.33(f) with respect to nonpower reactors. Furthermore, the rule would not affect submission of financial qualifications information and the need for a finding of financial qualifications with respect to transfers of nuclear power plant operating licenses.

The first filing of a license renewal application for a power reactor facility by an entity other than an electric utility could be as soon as the latter part of calendar year 2001. It would be desirable to complete the rulemaking before a prospective entity other than an electric utility submits an application. Accordingly, the staff plans to proceed with this rulemaking on an aggressive schedule.

RESOURCES:

The resources to conduct this rulemaking effort are estimated to be as follows. Approximately 0.5-1.0 FTE will be spread over FYs 2001 and 2002 and \$50K is expected to be expended during FY 2001 for contractor support. FYs 2001 and 2002 expenditures can be accomplished within the current budget and will be addressed in the Planning, Budgeting, and Program Management (PBPM) process. The preliminary resource and schedule estimates will be refined once the staff receives the Commission's approval to proceed.

COORDINATION:

The Office of the General Counsel has no legal objection to this rulemaking plan. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed the rulemaking plan for information technology and information management implications and concurs with the proposed rulemaking activity.

RECOMMENDATION:

The staff recommends that the Commission approve the plan to proceed with the Part 50 rulemaking using Option 2 in the attached rulemaking plan. The staff also recommends that the Commission expedite this action so that this rulemaking may be completed in advance of any application for license renewal from an applicant other than an electric utility.

/RA by Frank J. Miraglia Acting For/

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for Operations

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Attachment: Rulemaking Plan

Document Name:O:\NRR\DRIP\RGEB\RS\MENCINSKI\CP5033-8 *See previous concurrence

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OFFICE	RGEB*	Tech Ed*	SC:RGEB*	C:RGEB*	RGEB*
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DATE	7/28/00	7/31/00	8/11/00	8/22/00	8/22/00
OFFICE	RLSB*	D:DRIP	OGC	OCFO	OCIO
NAME	CGrimes	DMatthews	JGray	KFitch	TDonnell
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RULEMAKING PLAN

SUBMISSION OF FINANCIAL INFORMATION FOR APPLICATIONS TO RENEW OR EXTEND THE TERM OF AN OPERATING LICENSE FOR POWER REACTORS (10 CFR 50.33(f)(2))

Regulatory Issue:

Currently, Section 50.33(f) requires submission of financial qualifications information for applicants for initial operating licenses and renewal of operating licenses, except for applicants for and holders of operating licenses for nuclear power plants who are electric utilities. Thus, applicants for renewal of nuclear power plant operating licenses under 10 CFR Part 54 (the License Renewal Rule) who are entities other than electric utilities must submit financial qualifications information as part of their renewal application. However, Section 54.29 does not contain a requirement for an NRC finding of financial qualification for entities other than electric utilities seeking renewal of their operating license.

The NRC has received requests for license renewals and has granted two renewed licenses to electric utilities. However, because of ongoing deregulation in the electricity sector of the economy, new entities other than electric utilities are expected to be formed which will hold operating licenses for nuclear power plants. Some of these entities may decide to extend the life of their nuclear power plants through the license renewal process, and under the current rule would be required to submit financial qualifications information under Section 50.33(f). However, as discussed above, a finding of financial qualification need not be made under Section 54.29 in order to issue the renewed license. Therefore, the Commission needs to address and resolve by appropriate rulemaking the matter of financial qualifications for entities other than electric utilities seeking renewal of nuclear power plant operating licenses.

Existing Regulatory Framework:

Section 50.33(f)(2) requires an entity, other than an electric utility, who seeks a renewal of its operating license for a nuclear power plant, to submit as part of its application the same financial information required for an application for an initial license. This provision, which was adopted in 1984 (49 FR 35747, Sept. 12, 1984), was based upon the premise that where an applicant is an electric utility, the ratemaking process ensures that funds needed for safe operation will be made available.

In 1991, the Commission adopted the License Renewal Rule, 10 CFR Part 54 (56 FR 64943, Dec. 13, 1991), which established the requirements for an applicant seeking to renew a nuclear power plant operating license. Part 54 identifies the information that must be submitted to the NRC for review and describes the standards for issuing a renewed license. The statement of considerations (SOC) for the 1991 Rule stated that the basis of the 1984 rulemaking for exclusion of financial qualifications findings for electric utilities applies to the period of extended operation covered by a renewed license, and “extended” the 1984 rule’s finding to applicants for renewal of operating licenses. *Id.* at 64968 (first and second columns). Thus, the 1991 rule left unchanged the Section 50.33(f)(2) requirement that applicants for license renewal that are entities other than electric utilities submit financial qualifications information as part of the renewal application. However, through apparent oversight, Section 54.29 does not require a Commission finding of financial qualifications for renewal applicants who are entities other than electric utilities in order to issue a renewed operating license. This oversight was not corrected in the 1995 revision of Part 54, inasmuch as the rulemaking was

not directed at addressing the matter of financial qualifications but rather was focused on clarifying the scope of structures, systems and components (SSCs) subject to an aging review, and the nature of that review. See 60 FR 22491 (May 8, 1995).

It should be noted that the staff relies on the requirement in Section 50.33(f)(2) to obtain financial qualifications information on applicants seeking renewal of nonpower reactor operating licenses. Unlike the license renewal process for power reactors, a financial qualifications review is an integral part of the license renewal process for nonpower reactors. Therefore, the staff does not propose to amend this particular requirement. In addition, the staff does not intend to alter the existing requirement for financial qualifications information and review for applicants seeking transfers of nuclear power plant operating licenses.

How the Regulatory Issue will be Addressed by Rulemaking:

The staff intends to develop a rule that would modify the requirement in the last sentence of Section 50.33(f)(2) with respect to entities other than electric utilities seeking renewal of operating licenses for nuclear power plants, and provide in the SOC for the rule the bases for the NRC not making a financial qualifications finding for these entities in connection with renewal of such entities' nuclear power plant operating licenses. The rule would not affect, and would continue the existing requirement in Section 50.33(f) with respect to nonpower reactors. Furthermore, the rule would not affect submission of financial qualifications information and the need for a finding of financial qualifications with respect to transfers of nuclear power plant operating licenses.

The staff believes this rulemaking would be consistent with the Nuclear Regulatory Commission's Performance Goals and would most directly impact the goals of making NRC activities and decisions more effective and efficient, while reducing unnecessary regulatory burden. The rulemaking would help advance these goals by eliminating the need for entities other than electric utilities to submit information on financial qualifications in connection with license renewal, and would provide the bases for the current provisions of the License Renewal Rule which does not require a finding of financial qualifications for these entities when issuing a renewed nuclear power plant operating license. The rulemaking would not have an adverse impact on maintaining safety; the provisions in Section 50.33(f)(4) already ensure that financial information can be obtained from a licensee at any time at the Commission's discretion.

Rulemaking Options:

The staff has identified two rulemaking options.

Option 1 would have the Commission adopt a conforming change to Section 54.29 to add a finding of financial qualifications for entities other than electric utilities seeking renewal. This alternative could be adopted by direct final rulemaking, inasmuch as the rulemaking would correct Part 54 to be consistent with the 1984 financial qualifications rulemaking. However, this alternative would require entities other than electric utilities seeking license renewal to submit information on financial qualifications and the Commission to make a finding of financial qualifications. Both a renewal applicant that is other than an electric utility and the NRC would be required to expend resources on the subject of financial qualifications. Option 2 would have the Commission modify Section 50.33(f) to remove the requirement for submission of financial qualifications information from entities other than electric utilities. This would not only remove the need for entities other than an electric utility to submit financial

qualifications information, it would also provide the basis for the NRC not making a financial qualifications finding for such entities in connection with renewal of such entities' operating licenses. It would, therefore, place entities other than electric utilities on the same footing as electric utilities with respect to the license renewal process. Since neither the 1984 financial qualifications rule nor the 1991 or 1995 License Renewal rulemakings contained a basis for not making a financial qualifications finding for entities other than electric utilities, a rulemaking implementing this alternative would have to provide the basis for forgoing the financial qualifications finding for such entities.

Recommendation:

The staff recommends that the Commission adopt Option 2 to provide normal notice and comment rulemaking, and that the SOC for the rule set forth the Commission's basis for not requiring a financial qualifications review of entities other than electric utilities as part of license renewal for power reactor. There are a number of bases that could be relied upon in the rulemaking. These will be evaluated and discussed as part of the proposed rulemaking package.

Alternatives:

The only alternative to the rulemaking is the no-action alternative. This option would maintain the status quo whereby applicants that are other than electric utilities prepare and submit financial qualifications information, but the NRC makes no finding on financial qualifications in issuing the renewed license to these entities. This alternative would maintain the current inconsistency, as well as the lack of basis for the exclusion of a financial qualification finding for entities other than electric utilities seeking a renewed operating license. Accordingly, the staff rejects this alternative.

Impact(s) on Licensees:

The impact on power reactor license renewal applicants that are entities other than electric utilities would be varied depending on the option selected. Option 2 would ease the burden of submitting information of financial qualifications as part of the application process. Option 1 would maintain the requirement as is currently in place, thus providing no burden relief. For nonpower reactor license renewal applicants, there would be no burden relief.

Benefits:

If Option 2 is selected, the benefit would be that entities other than electric utilities, who are applicants for license renewal of power reactor facilities, would not have to submit the financial qualifications information or seek clarification on the requirements. There are no benefits for applicants associated with selecting Option 1 or for license applicants seeking license renewal of nonpower reactor facilities.

Office of the General Counsel (OGC) Legal Analysis:

The purpose of the rulemaking, as OGC understands the NRC staff's rulemaking plan, is to amend Section 50.33(f) by eliminating the requirement that applicants for renewal of nuclear power plant operating licenses, who are entities other than electric utilities, submit information

on financial qualifications.¹ The proposed rule would eliminate an inconsistency between Section 50.33(f) and Section 54.29 of the License Renewal Rule. Section 54.29 contains the criteria for issuance of a renewed operating license, and limits the scope of the renewal decision to: (i) aging management of certain systems, structures and components during the extended period of operation, and continued applicability of time-limited aging analyses; (ii) compliance with the requirements in 10 CFR Part 51 implementing the National Environmental Protection Act; and (iii) matters raised under 10 CFR 2.758.

Section 182 of the Atomic Energy Act of 1954, as amended, provides substantial discretion to the Commission to determine the information that must be submitted in an application to determine the financial qualifications of the applicant. Therefore, as an abstract matter there is no legal impediment to the rulemaking.

However, we do not believe that a defensible argument can be made that the proposed rule constitutes a conforming change that corrects an inadvertent failure to remove from Section 50.33(f) the requirement for financial qualifications review in connection with the renewal of nuclear power plant operating licenses. The 1991 License Renewal rulemaking does not provide any basis for not making the financial qualifications finding for entities other than electric utilities seeking renewal of nuclear power plant operating licenses. The only rationale in the 1991 rulemaking's SOC for not making the financial qualifications finding applies only to electric utilities whose rates of return are regulated by State ratemaking authorities. For this reason, we believe there is a legal infirmity in Part 54 inasmuch as no finding of financial qualifications for entities other than electric utilities is required by Section 54.29.

Accordingly, we recommend that the staff's proposed rule eliminating the Section 50.33(f) requirement for submission of financial qualifications information by entities other than electric utilities be adopted through the normal notice and comment rulemaking procedure, and that the SOC for the proposed rule set forth the Commission's basis for not requiring financial qualifications review in connection with the renewal of nuclear power plant operating licenses held by these entities.

The proposed rule will probably require preparation of an environmental assessment, as it appears that none of the categorical exclusions in 10 CFR 51.22 apply to this rulemaking.

We do not believe that the proposed rule will constitute a backfit as defined in Section 50.109(a)(1). The proposed rule would permissively relax the current requirement for submission of financial qualifications information by entities other than electric utilities seeking renewal of their nuclear power plant operating licenses. Such permissive relaxations do not "impose" a requirement, which is an essential element of "backfitting" as defined in Section 50.109(a)(1).

The proposed rule does not appear to constitute a major rule under the Small Business Regulatory Enforcement Fairness Act. Accordingly, the mandated 60-day period prior to effectiveness of major rules is not applicable.

¹The financial qualifications requirements in 10 CFR Parts 2 and 50 implement the requirements of Sections 182 of the Atomic Energy Act of 1954, as amended (AEA), which requires each applicant for a license to submit information as the Commission may determine to be necessary to decide the financial qualifications of the applicant.

The proposed rule will constitute a change in current information collection and reporting requirements on applicants for renewed nuclear power plant operating licenses who are other than electric utilities. Accordingly the change may require Office of Management and Budget review for purposes of the Paperwork Reduction Act.

The proposed rulemaking addresses the information relevant to financial qualifications findings by the Commission. The subject matter of this rulemaking is not within the purview of the National Technology Transfer and Advancement Act of 1995.

In conclusion, we recommend that the proposed rule should be adopted through the normal notice and comment rulemaking procedure and that the rulemaking must provide the bases for exclusion of financial review at the operating license renewal stage for entities other than electric utilities. We have not identified any legal impediments to promulgation of the proposed rule. There are several possible bases for excluding a financial qualifications review for entities other than electric utilities seeking renewal of nuclear power plant operating licenses; the proposed rulemaking will present the staff's recommended bases.

Agreement State Implementation Issues:

The proposed rulemaking would not result in any additional regulatory burden to Agreement States.

Category of Rulemaking:

This rulemaking is not expected to have an economic impact in excess of \$100 million. Therefore, on the basis of the preliminary economic impact assessment conducted for this rulemaking plan, this does not appear to be a major rule as defined in the Small Business Regulatory Enforcement Fairness Act.

Backfit Analysis:

The staff has determined that this rule would not constitute a backfit as defined in 10 CFR 50.109(a)(1). The proposed rule would permissively relax the current requirement for submission of financial qualifications information by entities other than electric utilities seeking renewal of their nuclear power plant operating licenses. Such permissive relaxations do not "impose" a requirement, which is an essential element of "backfitting" as defined in Section 50.109(a)(1).

For these reasons, a backfit analysis would not be required for this action.

Supporting Documents Needed:

The staff has not identified any supporting documents that need to be provided other than a regulatory analysis, which is usually required for a rulemaking.

A Paperwork Reduction Act statement, requiring Office of Management and Budget (OMB) clearance, will be needed. The OMB clearance package will be submitted concurrent with the proposed rule.

Issuance by Executive Director for Operations or Commission:

The staff intends to present this proposed rule for Commission approval.

Interoffice Management Steering Group:

No interoffice management group is necessary for this rulemaking.

Public/Industry Participation:

The proposed rulemaking will be issued for public comment. At this time, the staff does not intend to hold any workshops or public meetings on the proposed rule.

Resources:

The first filing of a license renewal application for a power reactor facility by an entity other than an electric utility could be as soon as the latter part of calendar year 2001. It would be desirable to complete the rulemaking before a prospective entity submits an application.

Approximately 0.5-1.0 FTE of staff resources is anticipated to be expended for this rulemaking and can be accomplished within the current budget for FY 2001 and FY 2002.

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OGC Contact:	Geary S. Mizuno, OGC
Technical Contact:	Michael J. Davis, NRR/DRIP/RGEB
Contractual Assistance:	Approximately \$50,000 would be required for development of a regulatory analysis should the staff decide to contract out.

Schedule:

Proposed Rule to EDO	9 months after the SRM is issued on the rulemaking plan
Final Rule to the EDO	9 months from publication of proposed rule.