

RULEMAKING ISSUE NOTATION VOTE

April 19, 2002

SECY-02-0068

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: PROPOSED RULE ON FINANCIAL INFORMATION REQUIREMENTS FOR APPLICATIONS TO RENEW OR EXTEND THE TERM OF AN OPERATING LICENSE FOR A POWER REACTOR

PURPOSE:

To obtain Commission approval to publish a proposed rule. The rule sets forth the bases for the Commission's determination that a financial qualifications review is not necessary for licensees who do not meet NRC's definition of "electric utility" and who are applying for license renewal; adopts a provision to address the potential gap in the financial qualifications regulations for non-electric-utility entities; and removes the requirement in 10 CFR 50.33(f)(2) that non-electric-utility entities submit financial qualification information in their Part 54 renewal applications. The proposed rule would add a new Section 50.76, a requirement segregated from 10 CFR 50.33(f)(2), that would require licensees who are transitioning from an electric utility to a non-electric-utility without going through license transfers to submit financial information. The proposed rule retains the financial qualifications requirements for applicants that wish to renew or extend their licenses for nonpower reactors.

BACKGROUND:

Section 182.a. of the Atomic Energy Act of 1954, as amended (AEA), requires each application for a license to include information necessary for the Commission to decide the "financial qualifications" of the applicant. Under 10 CFR 50.33(f)(2) an entity other than an electric utility that seeks to renew its operating license for a nuclear power plant must submit the same financial information in its application that is required for an application for an initial license. This provision, adopted in 1984 (49 FR 35747), was based upon the premise that the ratemaking process ensures that an applicant that is an electric utility will have funds to operate the plant safely.

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On December 13, 1991 (56 FR 64943), the Commission adopted the License Renewal Rule, 10 CFR Part 54, which established the requirements for an applicant seeking to renew a nuclear power plant operating license. Part 54 identifies the information that licensees must submit to the NRC for review, and describes the standards for issuing a renewed license, see 10 CFR 54.29. The standards for issuance of a renewed license do not include making a finding with respect to financial qualifications.

The statement of considerations (SOC) for the 1991 rule stated that the basis of the 1984 rulemaking for waiving a financial qualifications review for electric utilities applies not only to the term of the operating license but to the period of extended operation covered by a renewed license. The 1991 rule left unchanged the 10 CFR 50.33(f)(2) requirement that license renewal applicants that are not electric utilities submit financial qualifications information in their renewal applications, and extended the 1984 rule's finding to applicants for renewal of operating licenses. The revision to Part 54 published on May 8, 1995 (60 FR 22461), did not amend this requirement. Thus, while non-electric-utility entities are required to submit financial qualifications information, there is no requirement for a finding of financial qualifications for non-electric-utility entities, and no basis for the lack of such a finding requirement.

Since the 1995 rulemaking, the NRC has received numerous requests for license renewals and has granted eight renewed licenses for four plant sites to electric utilities. However, because of ongoing deregulation in the power market, new entities other than electric utilities may be created to become licensees of nuclear power plants. Some of these entities may decide to renew their licenses. Under the current rule they would be required to submit financial qualifications information under 10 CFR 50.33(f)(2). Moreover, despite the language of Section 54.29, the Commission must make a case-by-case finding of financial qualifications.

Such a case-by-case determination would be resource-intensive and may result in delays in approving renewal applications. The staff has reviewed the license transfer process to determine if there was a basis in the regulatory process that would obviate the need for such a finding at license renewal. The staff determined that, with one exception, the NRC does not need the financial qualifications information from license renewal applicants that are not electric utilities since the NRC can obtain and track financial qualifications information from the licensees through means other than the license renewal process. The exception is the potential gap in the financial qualifications regulation for non-electric-utility entities when a licensee transitions from an electric utility to an entity other than an electric utility without transferring its license. Although almost all utilities transfer to non-utility status with a license transfer, this regulatory gap, if not closed, would prevent the NRC from making a generic determination that financial qualifications review is unnecessary at license renewal. Therefore, the staff proposes to adopt a provision to close the gap in this proposed rule.

On November 30, 2000, the staff provided SECY-00-0225, containing the proposed rulemaking plan to the Commissioners. On March 14, 2001, the staff provided supplemental information on the proposed rulemaking plan to the Commissioners. An April 13, 2001, staff requirements memorandum directed the staff to proceed with the rulemaking.

DISCUSSION:

Section 50.33(f) requires that applicants for initial operating licenses and renewal of operating licenses submit financial qualifications information, except applicants for and holders of operating licenses for nuclear power reactors that are electric utilities. Section 50.33(f)(2) requires that an entity other than an electric utility that seeks to renew its operating license for a nuclear power plant submit the same financial information in its application that is required for an application for an initial license. However, the provisions in the License Renewal rule, 10 CFR Part 54, is mainly concerned with the technical and administrative requirements for license renewal.

The staff does not believe that the license renewal process, in and of itself, is sufficiently unique to warrant a separate financial review at the time of the renewal application. Other financial qualifications review processes are available if the need arises. The NRC performs financial qualifications reviews at the time of initial licensing and also when holders of nuclear power plant operating licenses apply for transfers of operating licenses. These reviews are more rigorous for applicants that are not electric utilities. Additionally, the timing of an impending license transfer allows the NRC to evaluate the financial qualifications of a proposed transferee with reasonable assurance that the financial information will remain relevant for some period after the license transfer occurs. Finally, 10 CFR 50.33(f)(4) allows ad hoc reviews when circumstances warrant. The staff believes that the current regulatory structure is sufficiently flexible to address unforeseen events that may trigger a review of power reactor licensee financial qualifications.

However, in certain situations, a licensee may transition from an electric utility to an entity other than an electric utility outside the license transfer process under 10 CFR 50.80. The staff proposes to create a new requirement in 10 CFR 50.76, "Licensee's change of status; financial qualifications," requiring an electric utility becoming an entity other than an electric utility without a license transfer to provide the same financial information as is required for obtaining an initial license.

It should be noted that the staff relies on the requirement in 10 CFR 50.33(f)(2) to obtain financial qualifications information on applicants seeking renewal of nonpower reactor operating licenses. The license renewal process for nonpower reactors, unlike the license renewal process for power reactors, includes a financial qualifications review. The staff does not propose to amend this requirement.

The NRC believes this proposed rule would maintain safety while reducing unnecessary regulatory burden.

RESOURCES:

The estimated resources necessary for this action are 0.75 FTE in FY 2002 and 0.25 FTE in FY 2003 for NRR and \$40,000 for contractor support in FY 2002. These resources are currently budgeted.

SCHEDULE:

The proposed schedule milestones for the rulemaking are as follows:

Publish proposed rule: Date of Commission's SRM for proposed rule plus 4 weeks.
Final rule to Commission: Date of Commission's SRM for proposed rule plus 9 months.

COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rulemaking. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections.

RECOMMENDATION:

That the Commission:

1. Approve publication in the *Federal Register* of the attached notice of proposed rulemaking (Attachment 1).
2. Certify that this rule, if adopted, will not have a significant impact on a substantial number of small entities and satisfies the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Note:

- a. The notice of proposed rulemaking (Attachment 1) will be published in the *Federal Register* for a 75-day public comment period.
- b. The Regulatory Analysis (Attachment 2) and the Environmental Assessment (Attachment 3) will be available in the Public Document Room.
- c. The Chief Counsel for Advocacy, Small Business Administration, will be informed of the certification regarding economic impact on small entities and the reasons for it, as required by the Regulatory Flexibility Act.
- d. The appropriate congressional committees will be informed.
- e. An OMB clearance package is not required because the burden reduction is insignificant.
- f. The staff will request comments on the proposed rulemaking package from State Liaison Officers.
- g. Copies of the *Federal Register* notice of proposed rulemaking will be distributed to all power reactor licensees. The notice will be sent to other interested members of the public upon request.

Commissioners

- h. The staff will request comments on the proposed rulemaking package from State Liaison Officers.

/RA by Carl J. Paperiello Acting For/

William D. Travers
Executive Director
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Attachments:

1. Draft *Federal Register* Notice
2. Draft Regulatory Analysis
3. Environmental Assessment

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2. Draft Regulatory Analysis
3. Environmental Assessment

ADAMS PACKAGE NO.: ML020700389
Commission Paper(Itr): ML020700307
Attachment 1: ML020700359
Attachment 2: ML020700372
Attachment 3: ML020700379

Document Name: C:\ORPCheckout\FileNET\ML020700307.wpd

* See Previous Concurrence

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