



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 24, 2014

SECRETARY

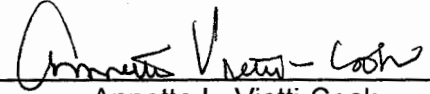
COMMISSION VOTING RECORD

DECISION ITEM: SECY-13-0124

TITLE: POLICY OPTIONS FOR MERCHANT (NON-ELECTRIC
UTILITY) PLANT FINANCIAL QUALIFICATIONS

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 24, 2014.

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


Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-13-0124

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MACFARLANE	X		X		X	4/1/14
COMR. SVINICKI	X				X	4/2/14
COMR. APOSTOLAKIS	X				X	4/11/14
COMR. MAGWOOD	X				X	3/18/14
COMR. OSTENDORFF	X				X	4/3/14

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Allison M. Macfarlane

SUBJECT: SECY-13-0124 – POLICY OPTIONS FOR MERCHANT
(NON-ELECTRIC UTILITY) PLANT FINANCIAL
QUALIFICATIONS

Approved XX Disapproved XX Abstain _____

Not Participating _____

COMMENTS: Below ____ Attached XX None ____



SIGNATURE

4/1/14

DATE

Entered on "STARS" Yes X No ____

Chairman Macfarlane's Comments
SECY-13-0124, "Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications"

The question before the Commission is one that addresses the requirements for demonstrating financial qualification as a prerequisite for the issuance of a Combined License under Part 52. This issue was raised by industry¹ to address what is perceived as a disconnect between the requirement to provide financial assurance and the unlikelihood that a merchant generator would have committed funding prior to receiving a Combined License.

I would like to commend the staff on their efforts to bring this issue to the Commission for consideration. Additionally, I commend the staff members who raised differing opinions on this matter and the NRC management for the professional way in which these differences were resolved.

The review of this issue raises multiple questions regarding the role of financial assurance in the issuance of Combined Licenses and during the construction and operation of merchant plants. The safety of operating and new construction nuclear power plants is properly monitored by the NRC through the Reactor Oversight Process (ROP) and the Construction Reactor Oversight Process (cROP). The long-term safety performance of the nuclear industry indicates that the risk-informed approach to reactor oversight is the appropriate approach for ensuring safety. In this regard, and as the staff notes in SECY-13-0124, our financial qualifications requirements have historically been viewed as an additional indirect method of ensuring safety.

I am concerned about the value of financial reviews performed immediately prior to Combined License issuance, given that there is no requirement that construction begin within a certain period of time following license issuance; Combined Licenses can be "placed on the shelf" and construction delayed or deferred indefinitely. I also believe that financial reviews done well in advance of actual construction will not serve the interest of safety. As a result, I do not approve Option 1, which preserves the status quo.

By the same token, I do not believe that we should eliminate all financial qualification requirements as recommended in Option 2, rulemaking approach A. I acknowledge the work of previous Commissions, whereby they did not find a direct connection between the financial condition of a licensee and the safety of the plants that they operated. However, I have not identified any previous period where nuclear plants, especially post-deregulation merchant plants, were as challenged as they have been over the last few years to operate profitably.

Therefore, rather than eliminate all financial qualification requirements, the better course of action would be to carefully study the current environment to determine whether the overall financial health of the licensee, as an ongoing process over the construction and operation of the facility, provides financial risk insights that could inform the ROP and cROP inspection activities.

The current regulations permit the Commission to request additional information concerning financial qualification that "may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility."² I believe that this ability to provide ongoing oversight in the area of financial qualification is important to maintain. I am concerned that rulemaking approaches A and B, as proposed by the staff, would eliminate this provision and remove all financial qualification requirements from the regulations.

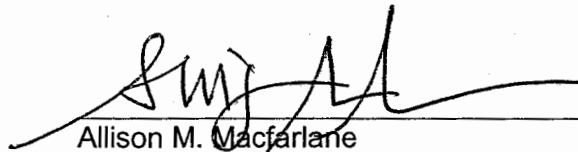
¹ Nuclear Energy Institute letter dated November 13, 2012, from Ellen C. Ginsberg to Dr. Allison M. Macfarlane, "Request for Commission Guidance to Clarify Application of Financial Qualifications Requirements in the Context of New Nuclear Plant Development by Merchant Generators."

² 10 CFR 50.33(f)(5).

Although I agree that it is possible for well-funded plants to be run poorly and for plants with financial challenges to operate well, I believe that we should carefully evaluate whether extended periods of financial challenge can lead to safety issues at a plant. The more recent history should be reviewed by the staff to investigate the connection between financial conditions and safety performance. Therefore, I support Option 2, Rulemaking, Approach B, in part: the staff should evaluate how the application of financial risk insights can help inform inspection activities in the long run and utilize the results of this review to inform the ROP and cROP guidance, as appropriate.

For financial reviews to be useful regulatory tools for plants licensed under Part 52, they must be executed contemporaneously with plant construction. Therefore, it is important to be able issue Combined Licenses with Financial Qualification License Conditions. To the extent that the current regulations would not support this construct, I agree with the staff that rulemaking will be required to address this issue. Therefore, I approve Option 2, Rulemaking, Approach C in principle, but I do not approve a direct substitution of the Part 70 financial requirements.

The staff should propose an alternative rulemaking option that establishes appropriate reactor financial qualification requirements that can be satisfied through License Conditions. The rulemaking should define financial qualification requirements for new facilities to be licensed under both Part 50 and Part 52. This rulemaking must also provide for ongoing certification of decommissioning funding and the ability for the Commission to request financial data as necessary as is currently codified in 10 CFR 50.33. In the development of this rulemaking the staff should examine the experience of other industries and regulatory agencies in addressing the role financial qualification plays in ensuring safety.³


Allison M. Macfarlane

4/1/14
Date

³ For example, the Department of Transportation and the Federal Aviation Administration have regulations concerning financial qualifications for commercial air carriers. See 14 CFR 119.36.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-13-0124 – POLICY OPTIONS FOR MERCHANT
(NON-ELECTRIC UTILITY) PLANT FINANCIAL
QUALIFICATIONS

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

04/12/14

DATE

Entered on "STARS" Yes ☒ No _____

Commissioner Svinicki's Comments on SECY-13-0124
Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications

I appreciate the history of the Commission's consideration and treatment of this issue presented by the staff in this paper. I concur in many of the staff's conclusions and approve the staff's recommendation that the Commission direct the staff to engage in a rulemaking effort to modify the 10 CFR Part 50 financial qualifications demonstration requirements. After considering the various rulemaking options presented, I join my Commission colleagues in approving Option 2 (rulemaking), Approach C (conforming reactor financial qualification requirements to 10 CFR Part 70 standards).

The choice among the rulemaking approaches presented is somewhat difficult at this stage, in that the Commission is not presented with a detailed framework for how each approach would be structured and applied. Approach A (to rescind the requirements) is the most clearly understood, given its nature. One could argue that the case to rescind the requirements altogether is the strongest case advanced in the paper (and I considered it in some detail for that reason). As noted in the paper, over the long history of these requirements, the Commission has reiterated that "[t]he NRC believes that its primary tool for evaluating and ensuring safe operations at nuclear power reactors is through its inspection and enforcement programs" and that "[t]he NRC has not found a consistent correlation between licensees' poor financial health and poor safety performance." Casting further doubt regarding any correlation, the staff included statistics (Enclosure 4) related to merchant and non-merchant operating plant performance within the Reactor Oversight Process (ROP) as follows:

A review of the ROP historical performance data demonstrates that no merchant plants have entered the "multiple degraded cornerstone" category, nor have they been subject to the 0350 process. By contrast, since 2000, nine electric utility plants have been in the multiple degraded cornerstone category, and two have been subject to the 0350 process. While the ROP does not include direct measurement of a licensee's finances and thus does not directly compare financial health with safety concerns at a facility, there does not appear to be a significant correlation between whether a plant is an electric utility or a merchant plant and whether the plant will be in the "degraded cornerstone" category. If there is any correlation, the merchant plants are slightly less likely to be in the degraded cornerstone category.

While interesting and certainly compelling enough to induce one to further study of the subject, I will agree with my colleagues that this paper, itself, does not constitute a wholly satisfactory basis upon which to rescind the requirements. Consequently, I approve Approach C, which will promulgate within Part 50 an approach similar to one the NRC has found sufficient in Part 70. This will consist of: 1) allowing a 10 CFR Part 50 or 52 license to be issued before the completion of a financial review; 2) permitting the inclusion of a license condition to assure applicant financial qualifications reflecting the revised standards for review; and 3) requiring the applicant to submit a plan for how it will proceed to finance the construction and operation of the facility.

The staff has also noted additional considerations of concern under any of the rulemaking approaches. With respect to these, I agree that the rulemaking should be inclusive of all Part 50 applicants and licensees currently required to submit detailed financial information and should reflect both initial licensing and license transfers. I do not support any ongoing review of financial information for operating reactors. This is a reflection of my confidence in the rigor of NRC's inspection and enforcement processes and in the thoroughness of the ROP and

Construction ROP. The staff should also examine the decommissioning funding regulations for any unintended impacts. Further, I approve the staff's utilization of an exemption process to address existing and emergent cases, as appropriate and necessary, during the pendency of the rulemaking process, which is estimated to take three to five years to complete, if fully resourced over that timeframe.

A handwritten signature in black ink, appearing to read 'Kristine L. Svinicki', written over a horizontal line.

Kristine L. Svinicki

4/12/2014

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-13-0124 – POLICY OPTIONS FOR MERCHANT
(NON-ELECTRIC UTILITY) PLANT FINANCIAL
QUALIFICATIONS

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None



SIGNATURE

April 11, 2014

DATE

Entered on "STARS" Yes x No

Commissioner Apostolakis' Comments on SECY-13-0124
Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications

The Atomic Energy Act grants broad discretion to the Commission to determine what information it deems appropriate for issuance of a license, including "information that the Commission, by rule or regulation, may determine to be necessary to decide technical and financial qualifications of the applicant." As noted by the staff, reviewing the financial qualifications of applicants for reactor licenses has been part of the NRC's regulatory regime since 1956, and the Commission has made changes to the underlying requirements during the intervening decades as circumstances warranted. Once again, the Commission is being presented with such a circumstance in SECY-13-0124.

I share the concerns raised by the staff and reiterated by some of my colleagues with respect to maintaining the status quo, especially with respect to merchant plant applicants for combined licenses, given there are no requirements as to when construction must begin following license issuance. Performing financial reviews well in advance of construction severely limits their utility. Moreover, the Commission has a long history of statements indicating a belief that any nexus between safety and the NRC's review of financial qualifications is indirect and of secondary importance to ensuring public health and safety. As reflected in the views of my colleagues, the NRC relies upon direct methods of ensuring the safety of operating plants and new plants under construction, namely technical reviews and inspections, in particular the Reactor Oversight Process and the Construction Reactor Oversight Process.

Nonetheless, there is insufficient evidence upon which to base a decision to completely eliminate all requirements for financial qualification reviews for licensing. Although the connection between financial qualifications and safety is believed to be indirect, I am not aware of a comprehensive or in-depth study of the issue. Moreover, the Commission also has a long history of showing concern for the potential for a decline in safety as a result of degraded financial qualifications, particularly with respect to merchant plants. For example, the staff has previously examined the possibility of eliminating financial qualification requirements for non-utility applicants and concluded that that it did not have a reasonable basis for doing so. The Commission concurred with the staff's recommendation. In addition, as Chairman Macfarlane noted, financial challenges to the profitability of nuclear plants have been reported in the last few years. The NRC employees who submitted non-concurrences with respect to SECY-13-0124 also provided many valid arguments for continuing to consider financial issues during reactor licensing. In my view, it would not be prudent for the Commission to remove all consideration of financial issues in nuclear power plant licensing.

For all of these reasons, proceeding with rulemaking along the lines that the staff outlines in Option 2C is the most sensible approach. The staff's proposed Option 2C would amend the 10 CFR Part 50 financial qualifications regulations to change the pre-licensing standard of financial qualifications review to one that would allow licensing based on a less detailed financial plan. This approach would facilitate the use of license conditions similar to those previously found acceptable by the Commission in nonreactor contexts.

The staff should have the flexibility to develop a proposed standard that achieves objectives similar to those of the Part 70 standard. The rulemaking effort should include a careful examination of decommissioning funding rules to ensure that there would be no adverse impact on those rules.

The Commission will receive diverse comments from industry, citizen groups, and other members of the public that will merit consideration as this process proceeds. As with any rulemaking, the staff should provide ample opportunity for such input and discussion so that any final product is well informed and considers all points of view.



George Apostolakis

4/11/14

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Magwood

SUBJECT: SECY-13-0124 – POLICY OPTIONS FOR MERCHANT
(NON-ELECTRIC UTILITY) PLANT FINANCIAL
QUALIFICATIONS

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

18 March 2014

DATE

Entered on "STARS" Yes X No _____

**Commissioner Magwood's Comments on SECY-13-0124,
"Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications"**

I appreciate the staff's efforts to address the policy options related to financial qualification requirements for merchant plants. In particular, the NRC legal staff's analysis of the viability of the proposed options, including those provided by external stakeholders and in the attached non-concurrence, was well-founded in past precedent. I also appreciate the very well-argued nonconcurrence from the Office of Nuclear Reactor Regulation financial staff.

The policy issue presented to the Commission is whether an applicant should be issued a combined license (COL) under 10 CFR Part 52, if funding for construction and future operation is not clearly identified at the time the license is issued. As the staff highlights in SECY-13-0124, demonstration of financial qualification before license issuance is required by current NRC regulations, but is not required by the Atomic Energy Act. The Atomic Energy Act grants broad discretion to the Commission to determine what information is appropriate for license issuance.

As highlighted in SECY-13-0124, these reviews were rather straight-forward in the past, when nuclear plants were built exclusively by rate-regulated utility companies in protected markets. Today, more models and options exist for plant construction and even rate-regulated utilities do not enjoy the same financial certainty as they did in past decades. Most urgent to some prospective applicants is the fact that would-be constructors of merchant nuclear plants find it difficult, if not impossible, to secure project funding in advance of initial license issuance because of perceptions from the financial community that the licensing process is uncertain. Unless a compelling argument exists to believe that the current level of review is necessary to protect public health and safety, it is appropriate for the Commission to consider a change in the *status quo*.

Further, in the course of its assessment of this topic, staff highlighted an underlying issue existent in our current regulations guiding review of a COL applicant's financial information: NRC staff performs a one-time review prior to COL issuance, but COLs have no expiration date. While this has not occurred in practice to date, the regulations currently allow an applicant to hold a COL indefinitely without further review of the applicant's qualifications. In such a circumstance—whatever value a financial qualification assessment might have as a gauge of an applicant's ability to meet safety requirements in the future—the NRC's pre-licensing financial qualification review becomes increasingly meaningless over time.

Further, as the staff wrote in SECY-13-0124, in the 57 years since the initial promulgation of the financial qualifications demonstration rules, there does not appear to be a direct relationship between the demonstration of financial qualifications and plant safety. As NRC staff first noted in SECY-79-299, the nexus is one that is indirect and is a single element in the Commission's system of multiple and redundant safety reviews and inspections, analogous to the overlapping protective echelons of the "defense-in-depth" approach used to design nuclear power plants.

In contrast to this indirect method, the primary means of ensuring the safe construction and operation of a new nuclear plant is through the very effective direct method of technical reviews and inspection efforts. A testament to this is Appendix D of the NRC Information Digest (NUREG-1350, Volume 25), which lists 30 U.S. commercial nuclear power plants that had financial reviews performed and construction permits issued—some of the plants listed as

“under construction” were cancelled as a direct result of licensee performance and inspection issues.

Thus, experience to date tends to indicate that reviews of financial qualifications are a poor predictor of future success. A fair argument can be made to eliminate these reviews and rely on NRC’s proven inspections to monitor licensee performance during operations. However, this anecdotal evidence is not a sufficient base of information upon which to eliminate a long-standing regulatory requirement and part of a facility’s current license basis. Without a more comprehensive analysis, I agree with the nonconcurrency filed by the NRC financial staff that argues against the removal of financial qualifications from the licensing basis such as proposed in Option 2, Approach A and Option 2, Approach B.

That said, there may be merit in reconsidering our review process to assure that its rigor is commensurate with the benefits derived from the indirect indications that it provides. While a more rigorous review might be appropriate in ensuring the ability of an applicant to successfully build and operate a nuclear power plant, it is not NRC’s role to act as an advisor of project financiers. A failed nuclear power plant project that either does not complete construction or results in a plant that is not permitted to operate by the NRC because an applicant cannot fund activities necessary for the plant to operate in compliance with NRC regulations may be an economic disaster for investors, but does not present a nuclear safety issue.

Therefore, an approach to financial review similar to that applied to applications under 10 CFR Part 70 may be appropriate. This approach would also allow for the issuance of a license in advance of a review of financial qualifications prior to the start of licensed construction activities.

This approach should be explored and developed more fully with broad stakeholder input and comment. Option 2, Approach C of SECY-13-0124 suggests that a rulemaking be launched to consider such a revision. I approve this strategy, which would conduct a rulemaking to modify the requirements in 10 CFR Part 50 and 10 CFR Part 50 Appendix C to reflect an approach that would:

- allow a 10 CFR Part 50 or 52 license to be issued before the completion of a financial review;
- permit the inclusion of a license condition to assure applicant financial qualifications reflecting the revised standards for review; and
- require the applicant to submit a plan for how it will proceed to finance the construction and operation of the facility, to ensure that the applicant has both a well-articulated understanding of the size of the project it was undertaking, and the financial capacity to obtain the necessary financing when the applicant was ready to start construction.

The proposed rulemaking should seek to develop a standard of review that approximates, as appropriate, the approach currently used for 10 CFR Part 70 applications, but does not reduce the standard of review below that of “appears to be financially qualified.” The rulemaking should be inclusive of all Part 50 applicants and licensees currently required to submit detailed financial information and should reflect both initial licensing and license transfers. Finally, as part of the rulemaking effort, staff should perform a careful examination of decommissioning funding regulations to ensure against unintended impacts on the agency’s decommissioning funding rules. If issues are identified, staff should inform the Commission in a timely fashion.

As this process will take considerable time, I recommend that staff consider granting applicant exemption requests that anticipate the outcome of the proposed changes to the current financial qualification regulations. If staff proposes to take such an action, it should provide appropriate briefings to Commission staff beforehand.

Finally, as the Commission first suggested in an April 2, 1984, *Federal Register* Notice (49 FRN 13044), staff should consider performing a detailed study to determine whether there exists any significant correlation between NRC's financial qualification reviews and later safe operations and use of nuclear materials, since the original rule was first promulgated in 1968.



3/18/14

William D. Magwood, IV

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSION OSTENDORFF

SUBJECT: SECY-13-0124 – POLICY OPTIONS FOR MERCHANT
(NON-ELECTRIC UTILITY) PLANT FINANCIAL
QUALIFICATIONS

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None



SIGNATURE

 7/3/17

DATE

Entered on "STARS" Yes X No

**Commissioner Ostendorff's Comments on SECY-13-0124,
"Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications"**

As discussed in SECY-13-0124, prior Commission decisions consistently indicate a belief that any nexus between safety and the NRC's review of financial qualifications is indirect and of secondary importance to ensuring public health and safety. In 1981, the Commission stated that "experience has failed to show a clear relationship between the NRC's review of an applicant's financial qualifications and the applicant's ability to safely construct and operate a nuclear power plant."¹ Similarly, in 1984, the Commission stated that "experience leads it to question whether pre-licensing reviews of applicants' future ability to pay for the cost of safety measures provide any significant additional assurance of safety beyond the assurance provided by the pre-licensing review of facility structures, systems, and components, operating and materials handling procedures, and technical qualifications, and by the Commission's inspection and enforcement program."² Consistent with this belief, the Commission has previously taken steps to modify financial qualifications requirements by eliminating the financial qualification requirement for electric utility operating license applicants and for license renewal applicants.

Over the years, the NRC's oversight programs and processes have matured and become more robust providing a vigorous framework for ensuring safe operation and construction of commercial nuclear reactors. The Resident Inspector program, established in the late 1970's, provides continuous monitoring of licensee activities in accordance with the baseline inspection program. The Reactor Oversight Process (ROP), developed in 2000, includes performance indicators that provide data that is evaluated and integrated with inspection findings to assess plant safety performance. The ROP results are used to determine if increased oversight is warranted for each individual plant. Likewise, the Construction Reactor Oversight Process (cROP), established in 2011, includes continuous monitoring of construction activities by construction resident inspectors as supplemented by regional inspectors. Based on the evolution of these programs, which have served to strengthen the NRC's safety oversight, it is a logical step to further adjust the financial qualifications requirements based on their limited additional safety benefit. Therefore, I approve option 2 to modify the financial qualifications requirements by rulemaking in a manner that would support the use of a license condition.

I firmly believe that NRC resources are better spent on direct measures of safety including the cROP and ROP rather than performing detailed reviews of financial information. Revising the financial qualifications review standard through rulemaking would provide clarity on the appropriate level of NRC financial review, which should be limited and support a finding at the time of licensing. A license condition approach could then be used to verify that sufficient funding is available prior to the start of construction. Since rulemaking will likely take several years to complete, I join Commissioner Magwood in recommending that the staff consider granting exemption requests that anticipate the outcome of the revised rule.

Finally, I do not support any ongoing review of financial information for operating reactors. I have confidence that the cROP and ROP are the best ways to identify performance deficiencies and to ensure they are corrected, no matter whether the root cause is financial distress or otherwise.

¹ "Financial Qualifications; Domestic Licensing of Production and Utilization Facilities," 46 Fed. Reg. 41786 (Aug. 18, 1981).

² "Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Reviews and Hearings for Nuclear Power Plants," 49 Fed. Reg. 13044 (Apr. 2, 1984).