RulemakingComments Resource

From:	GINSBERG, Ellen <ecg@nei.org>
Sent:	Monday, August 03, 2015 3:24 PM
To:	RulemakingComments Resource
Cc:	Malave, Yanely; Lauron, Carolyn; sarah.kirkwood@nrc.gov; GINSBERG, Ellen; COTTINGHAM, Anne
Subject:	[External_Sender] NEI Comments on NRC Draft Regulatory Basis Supporting Financial Qualifications Rulemaking (Docket ID NRC-2014-0161)
Attachments:	2015 08 03_NEI Comments on DRB for FQ Rulemaking_Docket ID NRC-2014-0161.pdf

Dear Secretary of the U.S. Nuclear Regulatory Commission:

Attached please find the comments of the Nuclear Energy Institute, on behalf of the commercial nuclear industry, regarding the June 2015 draft regulatory basis document issued in connection with the "Financial Qualifications for Reactor Licensing Rulemaking" (Docket ID NRC-2014-0161). A courtesy copy also will be mailed to the address as indicated in the NRC request for public comment at 80 Fed. Reg. 34,559-60 (June 17, 2015).

Please feel free to contact me or Anne Cottingham (awc@nei.org; 202.739.8139) if there are any questions concerning these NEI comments.

Cordially,

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NUCLEAR ENERGY INSTITUTE

August 3, 2015

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

SUBJ: Nuclear Energy Institute, Inc. Comments on NRC Draft Regulatory Basis Document Supporting "Financial Qualifications for Reactor Licensing Rulemaking" Docket ID NRC-2014-0161; RIN Number 3150-AJ43

The Nuclear Energy Institute, Inc.[1] ("NEI"), on behalf of the commercial nuclear industry, appreciates the opportunity to comment on the June 2015 draft regulatory basis document issued in connection with the "Financial Qualifications for Reactor Licensing Rulemaking." *See* NRC request for public comment at 80 Fed. Reg. 34,559-60 (June 17, 2015).

Current financial qualification ("FQ") regulations in 10 C.F.R. Part 50, including Appendix C to Part 50, require applicants to describe in detail the legal and financial relationships with entities upon which the applicant is relying for financial assistance, and the financial capabilities of each entity. We agree with the NRC staff's assessment in the draft regulatory basis that such FQ requirements "go well beyond the NRC's mandate of ensuring safety" and should be updated.

NEI supports the NRC's proposed rulemaking to amend FQ requirements for nuclear power reactors to eliminate the detailed FQ requirements in 10 C.F.R. § 50.33(f) and Part 50, Appendix C. NRC proposes to promulgate new provisions to modify the required showing in Section 50.33(f) from the demonstration of "reasonable assurance of obtaining the funds necessary" for construction and operation to a standard of "appears to be financially qualified" to construct and operate the plant, which is consistent with the standard in 10 C.F.R. Part 70. The applicant would be required to submit a plan describing how it will proceed to finance facility construction and operation. This plan would ensure that the applicant has a "well-

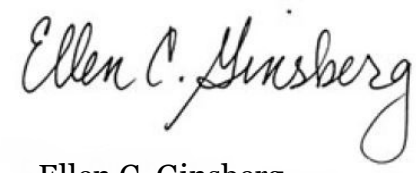
[1] NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

articulated understanding" of the size of the project being undertaken and the financial capacity to obtain the necessary financing before beginning reactor construction.

While the proposed amendments appear to reflect the Commission's direction in Staff Requirements Memorandum, SECY-14-0124, "Policy Options for Merchant (Non-Utility) Plant Financial Qualifications" (April 24, 2014), NEI's comments request that NRC staff consider additional modifications and clarifications to the draft regulatory basis document. These suggestions are discussions in the enclosure to this letter.

Please feel free to contact me or Anne Cottingham (awc@nei.org; 202.739.8139) if there are any questions concerning these NEI comments.

Cordially,



Ellen C. Ginsberg

Enclosure

cc: Yanely Malave, NRC
Carolyn Lauron, NRC
Sarah Kirkwood, NRC

COMMENTS OF THE NUCLEAR ENERGY INSTITUTE ON THE NRC DRAFT REGULATORY BASIS DOCUMENT SUPPORTING NRC RULEMAKING ON "FINANCIAL QUALIFICATIONS FOR REACTOR LICENSING"
DOCKET ID NRC-2014-0161; RIN NUMBER 3150-AJ43

The Nuclear Energy Institute, Inc.[1] ("NEI"), on behalf of the commercial nuclear industry, offers the following comments on the draft regulatory basis ("DRB") document supporting the U.S. Nuclear Regulatory Commission's ("NRC") proposed rulemaking to amend the agency's financial qualification ("FQ") requirements for nuclear power reactors.

Current FQ regulations in 10 C.F.R. Part 50, including Appendix C to Part 50, require applicants to describe in detail the legal and financial relationships with entities upon which the applicant is relying for financial assistance, and the financial capabilities of each entity. We agree with the NRC staff's assessment that these provisions "go well beyond the NRC's mandate of ensuring safety,"[2] and we support their elimination. Specifically, NRC proposes to eliminate the detailed FQ requirements in 10 C.F.R. § 50.33(f) and Part 50, Appendix C. NRC further proposes to modify the required showing in Section 50.33(f) from "reasonable assurance of obtaining the funds necessary" for construction and operation to a standard of "appears to be financially qualified" to construct and operate the plant, which is consistent with the standard in 10 C.F.R. Part 70. *See* NRC request for public comment at 80 Fed. Reg. 34,559-60 (June 17, 2015).

I. RULEMAKING IS NEEDED TO UPDATE NRC FQ REQUIREMENTS

NEI concurs with the Commission and the NRC staff that it is time to revise the agency's FQ provisions and guidance, and we appreciate the priority given to this issue.[3] The clear need for regulatory change is aptly summarized in the DRB's "statement of the problem" created by the existing FQ rule:

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[1] NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

[2] On this point the Draft Regulatory Basis, "Financial Qualifications for Reactor Licensing Rulemaking," June 2015, states (p. 13):

> After closely examining this issue, the NRC has determined that the details of [applicants' financial and legal] arrangements go well beyond the NRC's mandate of ensuring safety. The NRC fully expects that applicants and financiers will perform extensive due diligence on the project and the corresponding financial arrangements. Indeed, financiers' views on the financial risk of the project will influence the terms of financing (*e.g.*, interest rates, equity commitment). These are not the concerns of the NRC, because NRC's role is solely to ensure the plant is constructed to operate safely.

[3] *See* Staff Requirements Memorandum, SECY-13-0124, "Policy Options for Merchant (Non-Utility) Plant Financial Qualifications," April 24, 2014 ("2014 SRM").

> The current NRC reactor FQ requirements and review process were developed before the electricity markets in the United States were deregulated. While the current rules contemplate applications from non-utility merchant plants, no nuclear power merchant plant applicant has received an initial license as of the writing of this regulatory basis document. All current nuclear power reactor licensees were found to be financially qualified at initial licensing on the basis of their status as rate-regulated utilities. However, merchant plant applicants, unlike utility applicants that can recover costs through the ratemaking process, may not have a predictable source of funds for construction or operation at time of licensing. Without identified sources of funds, merchant plant applicants cannot meet the initial FQ requirements. (DRB, p. 6).

As a consequence of being promulgated before development of the U.S. merchant power market, the existing FQ regulations do not consider how license applicants might satisfy certain FQ provisions in cases where the applicant intends to use Project Finance to fund construction. As the DRB recognizes, without a license a merchant generator will likely find it difficult to attract investors and lenders willing to provide commitments for Project Finance for construction costs. This is particularly true where project construction will not begin immediately upon issuance of the license. The investors needed to fund construction under Project Finance are reluctant to commit prior to issuance of a license, but the NRC has interpreted the current FQ regulations as requiring commitments for funding prior to issuance of a license. This "Catch-22" situation renders it difficult if not impossible to use Project Finance, which is expected to be one of the primary methods to fund construction of a merchant nuclear power plant. As a result, we believe that revising FQ regulations is essential to resolve the FQ issue generically and permanently—and to avoid foreclosure of Project Finance for use in new plant construction.

NEI has previously argued that NRC FQ regulations for reactor licensing have little or no usefulness in ensuring the safety of subsequent plant construction and operation, and that "safety" issues associated with FQ can and should be identified and addressed throughout the license term of the plant by the licensee's programs (*e,g.*, maintenance, quality assurance) and NRC inspection and enforcement programs.[4] For that reason, the industry sought Commission direction to NRC staff to rescind the agency's FQ regulations for initial license issuance. Notably, in the DRB the staff corroborates our view with respect to the absence of any direct correlation between pre-licensing FQ reviews and subsequent safe construction and operating performance. (*See* DRB, pp. 10, 13.) The DRB also concludes that the NRC licensing process and oversight programs "directly assure" that new reactor construction and operations are conducted safely and in accordance with the license and NRC regulations. (*Id.*, p. 13; *see also* DRB Enclosure 4, Draft Regulatory Analysis, Sec. 2.2.1.)

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4 *See* February 6, 2014 NEI letter to the Commission concerning issues raised in SECY-13-0124.

The Commission's 2014 SRM did not opt to eliminate the FQ licensing requirements. Instead, the Commission directed NRC staff to initiate a rulemaking to conform the FQ requirements in 10 C.F.R. Part 50 for power reactor license applicants to the requirements for fuel cycle facility license applicants under 10 C.F.R. Part 70. (This approach was described as Alternative 2.3 in SECY-13-0124.) Mindful of the direction in the SRM, NEI supports the proposed rulemaking approach outlined in the DRB as the option most beneficial to the industry--absent elimination of initial FQ license reviews for reactors.

The proposed amendments to 10 C.F.R. 50.33(f), if promulgated, will appropriately limit the NRC's FQ-related inquiries to the construction cost estimate and the Applicant Financial Capacity Plan (AFCP). More broadly, the revisions to the FQ rule should eliminate some unnecessary regulatory burden and the current licensing impediment for applicants that are merchant generators. We therefore support the proposal to delete FQ requirements that are unnecessary to ensure adequate protection of public health and safety.

In reviewing the DRB, we are mindful of the Commission's direction in its 2014 SRM regarding the FQ rulemaking, which should include the following elements:

- Amend 10 C.F.R. Part 50 FQ requirements to conform reactor financial qualifications requirements to 10 C.F.R. Part 70 standards.

- Permit the inclusion of a license condition to assure applicant financial qualifications reflecting the revised standards for review.

- 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 is undertaking and the financial capacity to obtain the necessary financing when the applicant is ready to start construction.

- Allow a 10 C.F.R. Part 50 or Part 52 license to be issued with license conditions addressing financial qualifications.

- Examine NRC decommissioning funding regulations to ensure the FQ rulemaking will not have unintended impacts on the decommissioning funding rules.

- Define how compliance with FQ requirements is to be demonstrated for new facilities licensed under 10 C.F.R. Part 50 and Part 52.

- Include all Part 50 applicants and licensees currently required to submit detailed financial information and reflect both initial licensing and license transfers.

- Develop a standard of review that approximates, as appropriate, the approach currently used for 10 C.F.R. Part 70 applications, but does not reduce the standard of review below that of "appears to be financially qualified."

- Consider using an exemption process to address existing and emergent cases, as appropriate and necessary, during the pendency of the rulemaking process and that anticipates the outcome of the proposed changes to the current FQ regulations.

While the proposed rule appears to reflect the Commission's direction, we request that the NRC staff consider additional minor modifications and clarifications to the DRB, as discussed below.

II. SPECIFIC COMMENTS ON THE DRAFT REGULATORY BASIS DOCUMENT

A. The Proposed Rule Language

The proposed revisions to 10 C.F.R. § 50.33(f) and Part 50, Appendix C to make them consistent with the standard in 10 C.F.R. Part 70 appear generally consistent with the 2014 SRM. (See DRB, Enclosure 1.)

To meet the revised standard for *construction* authority, an applicant will need to show, through an Applicant Financial Capacity Plan (AFCP), that it possesses the "financial capacity" to obtain *construction* funding by obtaining financing. To meet the revised standard for *operating* authority, the NRC expects that the information submitted by applicants would be similar to what is required by existing Section 50.33(f)(2).

The draft regulatory basis provides that electric utility applicants that recover costs of construction and operation are considered to be financially qualified with no further review. (DRB, pp. 17-18). However, this intent does not appear to be expressed in the draft rule language modifying Section 50.33(f)(1), as it pertains to construction. (DRB, Enclosure 1, pp. 25, 27-28.) We therefore request that NRC clarify the proposed rule language to confirm that electric utilities will be deemed to be financially qualified for construction by virtue of cost-of-service rate recovery for construction (*i.e.*, they need not provide a construction cost estimate or an Applicant Financial Capacity Plan).

Merchant generator applicants for *operating* authority will be required to submit 5-year projections of the costs of operation and the sources of funds (which could include one or more power purchase agreement(s) and/or projections of the market price of power in the plant's service area). (DRB, Enclosure 1, pp. 26, 28.) If the applicant does not have finalized sources of funds for operation, a license condition could be used to require updated projections and sources of funds prior to initial fuel load. The use of license conditions is discussed at pp. 14-17 of the DRB.

Overall, the proposed rule language reflects a reasonable approach to implementing the Commission's SRM. However, the specific proposed revision to Section 50.33(f)(5) (renumbered in the proposed rule language as Section 50.33(f)(4)) appears overly-broad in that it extends beyond FQ issues:

> The Commission may request an applicant or licensee to submit information regarding the applicant or licensee's ability to conduct the activities authorized by the license or to decommission the facility.

In contrast, Section 50.33(f)(5) currently states:

> The Commission may request an established entity or newly formed entity 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.

As amended, this provision appears to inadvertently remove the link to FQ and instead would expand the scope of NRC inquiry to the licensed activities themselves. Evaluating an applicant's ability to carry out licensed activities could cover many activities, such as quality assurance and operating programs, which are already subject to other NRC regulations and agency oversight. The new language thus appears inconsistent with the overall purpose of the rulemaking, which is to appropriately limit the scope of NRC FQ reviews. Additionally, to the extent the NRC intends that the revised provision continue to relate to FQ, the agency's ability to collect this information is already covered by existing requirements (*e.g.,* 10 C.F.R. § 50.75 for decommissioning activities). Lastly, to the extent this provision is aimed at existing licensees, its placement in the section describing the content of *applications* appears inappropriate. Accordingly, if the NRC staff determines that that it is necessary to retain this provision, we request that it revise the language to more clearly express its intended scope.

B. Applicant Financial Capacity Plans

The draft regulatory basis describes the AFCP required under the proposed amendments to 10 C.F.R. § 50.33(f) for construction as including two main elements: (1) a description of the management team that reflects the team's experience and expertise in areas of finance, capital sourcing, and large build projects, and (2) a description of the anticipated funding methods and sources. (DRB, p. 14.) An AFCP would also include a proposed license condition to satisfy FQ requirements at the time of licensing, should one be necessary to confirm that the funding will be available when the applicant is ready to begin construction.

The requirement that the AFCP include a description of the "management team" is unclear and seemingly unnecessary. It would appear on its face to involve an assessment of individuals ("personnel on the team and any consultants"), but the scope

of individuals included and the criteria to be applied to them is not discussed. The NRC staff stated during an April 29, 2015 public meeting that the AFCP description of the "management team" should focus on the financial capacity of companies or corporate entities rather than individuals, and may account for the financial capacity of the applicant's parent company (companies). We think it would be useful for the final regulatory basis document to include such a clarification.

C. Use of License Conditions for Construction FQ

The Commission's SRM directed the NRC staff to include in the rulemaking the opportunity to use a license condition for FQ. The DRB satisfies this direction by stating that for merchant generator applicants, the NRC would further distinguish between those with 50 percent or less committed financing at the time of the application and those with commitments for more than 50 percent of construction costs. (DRB, p. 15.) In the former case, a license condition (or similar vehicle acceptable to the NRC) would require documentation of funding prior to construction. In the latter case, no license condition would be required.

The SRM did not specifically contemplate a distinction in regard to the use of license conditions for merchant generators for construction, based on the degree of committed funding at the time of the licensing review. However, the NRC's proposed approach allows a license condition for the case where no funding is yet available (100% uncommitted), because the applicant will use a project finance model for the entire project. Accordingly, we believe the proposal meets the Commission's direction. It should relieve the need for a license condition in cases where some funding is available, appropriately reducing regulatory burden in those cases. NEI therefore supports the DRB's explanation of the appropriate use of license conditions in the FQ context. The NRC should document these points (*e.g.*, in the Supplementary Information section) when the proposed rule is published for comment.

D. FQ Requirements for Non-Power Production and Utilization Facilities

The DRB defines "non-power production and utilization facilities" as all existing non-power reactors licensed under 10 C.F.R. 50.21(a) and (c) and proposed production and utilization facilities licensed under 10 C.F.R. 50.22 for the production of medical radioisotopes, such as molybdenum-99. (DRB, p. 18.) With regard to this class of applicants, Section 7.2.3. of the DRB states:

> So far, no one has raised a concern with the NRC regarding the FQ requirements for non-power production and utilization facilities. It does not appear that applicants for this type of facility have had the same difficulty meeting current requirements for initial licensing that current merchant plant applicants are experiencing. . . . Because it appears that the current requirements are working for this class of applicants, the NRC expects that this class of applicants will show they are financially qualified

> by demonstrating their availability of funds at the time of licensing. The NRC anticipates that some of the current requirements of Appendix C of 10 CFR part 50 will be placed in guidance for this class of applicants.

We see no reason why applicants for non-power production and utilization facilities should not be granted the same funding approaches as those available to applicants for power reactor facility licenses. Although such applicants may not have previously experienced difficulties in arranging financing, the logic supporting DRB's proposed approach for power reactor license applicants holds equally in this context. Therefore, if such applicants have the requisite financial capacity, they should also be allowed to use a license condition to establish FQ. The final DRB should clarify this point.

E. Draft Regulatory Analysis in the DRB

The draft regulatory analysis adequately supports the draft regulatory basis for the proposed rule. Although conducting a rulemaking may present higher quantitative costs than other alternatives in the short term (such as taking no action), the significant resulting benefit to applicants—particularly the removal of an unnecessary impediment to licensing for merchant generators—renders the rulemaking a desirable, cost-beneficial option.[5]

F. Draft Regulatory Basis Questions for Public Comment

NRC poses the following questions in Enclosure 2 to the DRB (p. 32).

NRC Question:

E2-1. Is the NRC considering an appropriate approach for the objective described in the draft regulatory basis?

NEI Response:

The NRC recognizes that 10 C.F.R. 50.33(f) is out of sync with the current structure of electric markets. Possible options for resolving this problem have been discussed during several NRC-stakeholder public dialogues over the last several years. While the NRC has not accepted the industry's proposal to eliminate the FQ regulation, NRC has proposed a workable resolution. Accordingly, we believe the NRC's proposed approach for meeting the objective described in the DRB will adequately serve industry and NRC interests, and is consistent with the 2014 SRM.

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[5] The table comparing the qualitative costs and benefits of the alternatives (Draft Regulatory Analysis, p. 18) states that for the "industry operation" attribute of alternative 2.3, there are no qualitative *benefits*, while the qualitative *costs* are described as a "significant reduction in costs compared to the status quo." It is not clear why the significant reduction in costs would be categorized as a cost, rather than as a benefit. For example, the discussion of this attribute for alternative 2.1 categorizes the "averted costs compared to status quo" as benefit rather than a cost.

The proposed rulemaking would eliminate the detailed FQ requirements of the current Section 50.33(f) and 10 C.F.R. Part 50 Appendix C, expressly adopt the Part 70 standard, and allow the use of license conditions for applicants who do not yet have committed funding for construction or detailed information on sources of revenue for operation. As outlined in the DRB, NRC's approach appears well-crafted to reduce regulatory burden (particularly for merchant generators), allow greater regulatory flexibility, and eliminate current requirements that may prevent licensing of merchant generators. While there will be compliance costs associated with the new regulations, NEI expects that those costs will be less than those incurred under the current rule. Accordingly, we request that the NRC proceed to implement the proposed rule changes as expeditiously as possible.

NRC Question:

E2-2. Are there other regulatory problems within or related to the scope of the rulemaking efforts that the NRC should consider? Are there other approaches or alternatives the NRC should consider to resolve those regulatory problems?

NEI Response:

NEI is not aware of any significant concerns relating to the NRC's proposed approach and is not suggesting any alternative approach.

NRC Question:

E2-3. In its staff requirements memorandum, SRM-SECY-13-0124, the Commission directed the staff to "consider performing a detailed study to determine whether there exists any significant correlation between the NRC's financial qualifications review and later safe operations and use of nuclear materials, since the original rule was first promulgated in 1968." The NRC seeks comment on whether it should conduct the study, and if so, how the study could be conducted. The NRC also seeks any examples where a licensee's financial health at the time of licensing review can be correlated to a degradation of nuclear safety or the environment after receipt of its license.

NEI Response:

NEI believes the statement in the DRB is correct—there is no direct correlation between the NRC's FQ licensing reviews and later safe plant construction and operation. Licensee management and operating programs, as well as ongoing NRC oversight, ensure the safety of construction and operation. Given the NRC staff's conclusion that there is no significant correlation, it does not appear that another NRC study is warranted. Further, the agency's limited resources, and the importance of prioritizing those resources based on safety significance, also argue against another NRC study. This activity would unnecessarily delay the proposed rulemaking.

Should the NRC decide to perform this study, NEI encourages the agency not to wait for the completion of the study in order to proceed with the rulemaking (*i.e.,* the rulemaking should proceed apace, regardless of the status of the study).

NEI is not aware of any examples where a licensee's financial health at the time of the FQ licensing review correlated to a later degradation of nuclear safety. Although NRC licensees have been involved in some bankruptcy matters (*e.g.* Diablo Canyon, Comanche Peak), those proceedings (which involved restructuring of debt) did not have any relationship to safe operations.[6] The NRC was appropriately notified of the licensee's financial matters and exercised appropriate oversight. We do not believe that any of these situations involved precursors that were detected or detectable at the time of the pre-licensing financial reviews.

Likewise, there is no evidence of a relationship between any case of poor operational or regulatory performance and pre-licensing financial qualifications. Indeed, historically, we expect that the NRC will not find any correlation between decreased plant performance and whether the licensee is a merchant generator or an electric utility. Both types of licensees face cost pressures, whether from deregulated markets or public utility commissions. Nonetheless, licensees recognize their obligation to ensure safety and therefore must ensure that cost (or schedule) pressures do not adversely affect safety. Further, we do not expect that the NRC will detect a correlation between regulatory or plant performance indicators and financial indicators (much less, *pre-licensing* financial indicators).

G. NRC Questions for Public Comment on Possible Cumulative Effects of Proposed FQ Rulemaking

The *Federal Register* notice solicited public comments on the cumulative impacts that may result from the proposed FQ rulemaking. *See* 80 Fed. Reg. 34,560. NEI supports the rulemaking and does not believe that it will result in a significant cumulative burden on applicants or licensees. In fact, the proposed rule would *reduce* the burden on applicants and licensees by eliminating the requirement to provide the detailed information in the current FQ requirements. NEI encourages the NRC to consider reducing the FQ burden even further in the future, which would positively affect (reduce) the cumulative effects of NRC regulation.

The NRC's request for public comment on the DRB document also asks stakeholders to consider the following questions:

Question 1:

In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is

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[6] Bankruptcy or insolvency matters involving non-operating owners would be further attenuated from safety issues.

published to the actual implementation of any new proposed requirements including changes to programs, procedures, or the facility?

NEI Response:

NEI supports this rulemaking and does not believe that the proposed revision to 10 C.F.R. Part 50 will result in a significant cumulative burden on NRC applicants or licensees. In fact, the proposed rule would *reduce* the burden on applicants and licensees by eliminating the requirement to provide the detailed information set forth in the current FQ requirements. We therefore recommend that the proposed amendments to FQ requirements 10 C.F.R. Part 50 and Appendix C to Part 50 be made effective as soon as possible after being promulgated.

Question 2:

If current or projected CER challenges exist, what should be done to address this situation (*e.g.*, if more time is required to implement the new requirements, what period of time would be sufficient, and why such a time frame is necessary)?

NEI Response:

See NEI response to Question 1, above.

Question 3:

Do other regulatory actions (*e.g.*, orders, generic communications, license amendment requests, and inspection findings of a generic nature) by NRC or other agencies influence the implementation of the potential proposed requirements?

NEI Response:

No, not that we are aware. *See* NEI response to Question 1, above.

Question 4:

Are there unintended consequences? Does the potential proposed action create conditions that would be contrary to the potential proposed action's purpose and objectives? If so, what are the consequences and how should they be addressed?

NEI Response:

Promulgation of the proposed amendments to 10 C.F.R. Part 50 will have no unintended consequences and, rather, will reduce burden as it enhances licensee options for funding. *See* NEI response to Question 1, above.

Question 5:

Please provide information on the costs and benefits of the potential proposed action. This information will be used to support any regulatory analysis by the NRC.

NEI Response:

As indicated in NRC's regulatory analysis, the cost of the rulemaking is relatively small. The rule itself would reduce some of the current costs of preparing applications, and that reduction would also be relatively small. In contrast, the benefits of the rule would be significant. The rule would enable some merchant applicants to receive a license in cases in which they currently could not obtain a license given the provisions in the current rule. This benefit substantially outweighs the costs of the rulemaking.