

Rulemaking Issue
(Notation Vote)

February 26, 2018

SECY-18-0026

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: PROPOSED RULE: FINANCIAL QUALIFICATIONS REQUIREMENTS
FOR REACTOR LICENSING (RIN 3150-AJ43)

PURPOSE:

To obtain Commission approval to publish in the *Federal Register* the enclosed proposed rule (Enclosure 1), which would amend the financial qualifications (FQ) requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," to conform to the FQ standards in 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material."

SUMMARY:

The FQ requirements for licensing of production and utilization facilities are specified in paragraph (f) of 10 CFR 50.33, "Contents of applications; general information," and in 10 CFR Part 50, Appendix C, "A Guide for the Financial Data and Related Information Required To Establish Financial Qualifications for Construction Permits and Combined Licenses." These requirements apply to both applicants for new permits or licenses and applicants for license transfers after initial licensing.

In an April 24, 2014, staff requirements memorandum (SRM), the Commission approved the U.S. Nuclear Regulatory Commission (NRC) staff's recommendation to conduct a rulemaking

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and directed the staff to amend the FQ requirements in 10 CFR Part 50¹ to conform to the FQ review standard in 10 CFR Part 70.

In response to the SRM, the staff developed and published for public comment a draft regulatory basis (80 FR 34559; June 17, 2015). In the draft regulatory basis, the staff included preliminary draft rule language that would require applicants for a construction permit (CP), operating license (OL), or combined license (COL) to submit a plan for financing the construction and operation of the facility.² The plan would demonstrate that the applicant has both a well-articulated understanding of the size and scope of the project it is undertaking and the capacity to obtain the necessary financing prior to the start of licensed activities (i.e., construction or operations). In addition, the staff recommended rescinding Appendix C to 10 CFR Part 50 and using license conditions for applicants with 50 percent or less available funding to ensure that adequate funding is available prior to the start of licensed activities. The NRC has determined that an applicant with commitments for greater than 50 percent funding for proposed licensed activities has made a reasonable and sufficient demonstration of financial capacity; such an applicant would not be subject to license conditions for future verification.

The NRC received four public comment submissions on the draft regulatory basis. In response to substantive comments received on the draft regulatory basis, the staff added the initial licensing of non-power production or utilization facilities (NPUFs) to the proposed rule. These proposed regulations are consistent with the standards proposed for merchant power reactor applicants. Additionally, the staff revised the regulatory basis to address comments that challenged the basis for, and recommended rescission of, the FQ requirements in their entirety.

The staff completed the final regulatory basis and informed the Commission via memorandum dated November 16, 2016.³ On October 16, 2017, the staff held a public meeting to discuss the preliminary draft rule language and the implementing guidance documents.

Additionally, in SRM—SECY-13-0124, the Commission directed the staff to ensure that the FQ rulemaking would not result in any unintended consequences to the NRC's decommissioning funding regulations and to inform the Commission if any issues were identified during the examination of the decommissioning funding regulations. After reviewing the FQ regulations in conjunction with the NRC's decommissioning funding regulations in 10 CFR 50.75, 50.82, and 52.110, the staff determined that clarification was necessary in the proposed rule for license transfer applicants for facilities in decommissioning. The proposed changes would not affect the NRC's decommissioning funding requirements. The staff recommends that the Commission approve publication of the proposed rule for comment.

¹ SRM-SECY-13-0124, "Staff Requirements—SECY-13-0124—Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications," dated April 24, 2014 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14114A358).

² Note that electric utility applicants for a COL or for an OL are exempt under 10 CFR 50.33(f) from FQ reviews for operations, as electric utilities are generically presumed to be financially qualified for operations.

³ "Memorandum from Victor M. McCree to the Commission; Regulatory Basis for Financial Qualifications for Reactor Licensing Rulemaking (3150-AJ43)," dated November 16, 2016 (ADAMS Accession No. ML16172A261). "Financial Qualifications for Reactor Licensing Rulemaking; RIN Number: 3150-AJ43; NRC Docket ID: NRC-2014-0161; Regulatory Basis Document," dated October 2016 (ADAMS Accession No. ML15322A185).

BACKGROUND:

Under current 10 CFR 50.33(f) and as reflected in Appendix C to 10 CFR Part 50, an applicant for an initial license under 10 CFR Part 50 must demonstrate that it possesses or has “reasonable assurance” that it can obtain the funds necessary to construct or operate the facility.⁴ These requirements also apply to applicants for COLs for new reactors under 10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” which references the FQ requirements in 10 CFR Part 50. Further, the “reasonable assurance” standard applies to applicants for license transfers under 10 CFR 50.80, “Transfer of licenses,” and 10 CFR 52.105, “Transfer of combined license,” both of which refer back to the FQ information required by 10 CFR 50.33.

A merchant plant applicant is a non-rate-regulated entity (i.e., non-rate-regulated power producer) that engages in the business of producing, manufacturing, generating, buying, aggregating, marketing, or brokering electricity for sale at wholesale or for retail sale to the public. A merchant plant is not subject to regulation as a public utility, as defined in 10 CFR 50.2, except as specifically provided by law. The NRC found all current operating nuclear power reactor licensees to be financially qualified at initial licensing on the basis of their status as rate-regulated electric utilities and their ability to recover costs through utility ratemaking processes. However, at the time of licensing, merchant plant applicants, unlike electric utility applicants, might not have a predictable source of funds for construction or operation. These applicants must rely on alternative forms of financing, such as their own internal resources or third-party project finance investors, to support facility construction and operation. Accordingly, without identified sources of funds, merchant plant applicants may not be able to meet the NRC’s current FQ requirements.

Similarly, applicants for NPUFs may rely on multiple sources of funding to finance the construction and operation of a proposed facility. Like merchant plant applicants, NPUF applicants may not have a sufficient source of funds identified at the time of application or initial licensing, which could impact their ability to meet the NRC’s current FQ requirements.

In 2012, Nuclear Innovation North America, LLC (NINA) and the Nuclear Energy Institute (NEI) raised an issue with the FQ requirements for merchant plants. In letters to the NRC, NINA and NEI stated that it is difficult, if not impossible, for merchant plant COL applicants to secure project funding to meet FQ requirements in advance of initial license issuance.⁵

In November 2013, the staff provided the Commission with options to address whether an applicant should be issued an initial license if it has insufficient funding identified at the time of licensing.⁶ In SRM-SECY-13-0124, the Commission directed the staff to conduct a rulemaking to amend the FQ requirements in 10 CFR Part 50 to “a standard of review that approximates, as appropriate, the approach currently used for 10 CFR Part 70 applications, but does not reduce

⁴ “Initial license” refers to the first submittal of an application for a production or utilization facility license and does not include a request for a renewal or extension of the term of an existing OL.

⁵ Letter from Mark A. McBurnett, NINA, to R. William Borchardt, NRC, Request for Commission Consideration of Policy Issue Regarding Financial Qualifications for New Merchant Plants, dated May 31, 2012 (ADAMS Accession No. ML12173A448). Letter from Ellen C. Ginsberg, NEI, to Allison M. Macfarlane, NRC, Request for Commission Guidance to Clarify Application of Financial Qualifications Requirements in the Context of New Nuclear Plant Development by Merchant Generators, dated November 13, 2012 (ADAMS Accession No. ML12334A187).

⁶ SECY-13-0124, “Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications,” dated November 22, 2013 (ADAMS Accession No. ML13057A006).

the standard of review below that of ‘appears to be financially qualified.’⁷” As directed by the Commission, the proposed rulemaking would require the applicant “to submit a plan for how it would] proceed to finance the construction and operation of the facility.”⁸ The plan would demonstrate that “the applicant has both a well-articulated understanding of the size [and scope] of the project it is undertaking and the financial capacity to obtain the necessary financing when the applicant is ready to start construction.”⁹ The rule would also permit the inclusion of a license condition to ensure that funding is available prior to the start of licensed activities (i.e., construction and operations), rather than at the time of license issuance.

With regard to the regulatory basis developed in support of the proposed rule, the NRC conducted two public meetings. The staff conducted the first meeting on April 29, 2015, before publication of the draft regulatory basis and solicitation of public comment (80 FRN 34559; June 17, 2015).¹⁰ The purpose of this meeting was to discuss the direction and status of the rulemaking and to provide information related to Section 7, “Proposed Financial Qualifications Requirements,” of the draft regulatory basis. The staff conducted the second meeting on July 8, 2015, during the public comment period for the draft regulatory basis.¹¹

The NRC received four comment submissions on the draft regulatory basis, including comments from the University of Florida, The George Washington University Regulatory Studies Center, NEI, and Coqui RadioPharmaceuticals Corporation. In its memorandum to the Commission dated November 16, 2016,¹² the staff discussed the four comment submissions and the subsequent changes made to the regulatory basis. The staff also discussed a non-concurrence that advocated for preparing a Commission paper to recommend rescinding the requirements in 10 CFR 50.33(f) and Appendix C to 10 CFR Part 50 in their entirety. The non-concurrence conveyed three primary concerns:

- 1) The staff had not adequately responded to public comments. In response to this concern, the staff revised the regulatory basis to address public comments and added a comment response table as Appendix A to the regulatory basis.
- 2) The regulatory basis was inadequate. In response to this concern, the staff expanded the discussion of the proposed approach to the FQ requirements that appears in Section 8, “Stakeholder Involvement” of the regulatory basis document. The proposed rule also requests public comment on rescission of the FQ regulations.
- 3) The staff had not justified its proposed path forward. To address this concern, in its November 16, 2016, memorandum, the staff further informed the Commission about issues raised during the development of the regulatory basis. Additionally, the staff expanded the discussions of the proposed approach to the FQ requirements that appear in Section 8 and Section 10, “Conclusion,” of the regulatory basis document. The enclosed draft *Federal Register* notice for the proposed rule includes several questions to request public comment on the NRC’s approach to FQ, the applicant’s financial

⁷ SRM-SECY-13-0124, at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ “Public Meeting Summary, April 29, 2015, Meeting to Discuss the Proposed Financial Qualifications Requirements Included in the Draft Regulatory Basis for the Rulemaking on Financial Qualifications for Reactor Licensing,” May 6, 2015 (ADAMS Accession No. ML15126A402).

¹¹ “Summary of (July 8, 2015), Meeting to Discuss the Draft Regulatory Basis on Financial Qualifications for Reactor Licensing,” August 12, 2015 (ADAMS Accession No. ML15219A643).

¹² Regulatory Basis for Financial Qualifications for Reactor Licensing Rulemaking (3150-AJ43).

capacity information as presented in the proposed rule, and the overall effectiveness of NRC FQ requirements and other financial reporting requirements.

At the April 29, 2015, public meeting, the staff discussed the proposed FQ requirements as presented in Section 7 of the draft regulatory basis. Subsequently, in May 2015, based on information presented at that meeting, NINA submitted an exemption request for its application for two COLs for South Texas Project (STP), Units 3 and 4. The exemption request was supported by the “appears to be financially qualified” FQ standard and proposed license conditions, consistent with those presented in the draft regulatory basis. In November 2015, the NRC completed its uncontested hearing on NINA’s application. The Commission authorized issuance of the STP licenses, finding the staff’s review adequate to make the necessary regulatory safety and environmental findings, including its determination that NINA met FQ requirements as presented in the exemption request.¹³ The NRC issued the licenses on February 12, 2016, with FQ-related conditions included in Section 2.D.14.k of the licenses.¹⁴

DISCUSSION:

As directed in SRM—SECY-13-0124, the specific objective of the proposed rulemaking is to amend the current FQ requirements of “reasonable assurance” under 10 CFR Part 50 to “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 proposed rulemaking would—(1) remove the requirement for an applicant to demonstrate that it “possesses or has reasonable assurance of obtaining” the funds necessary for construction and operation and (2) replace that requirement with an “appears to be financially qualified” standard similar to the standard in 10 CFR 70.23(a)(5). Additionally, the proposed rule would remove Appendix C to 10 CFR Part 50 because it would no longer be necessary. Under the proposed changes, an applicant would submit a plan describing how it will proceed to finance the construction and operation of the facility. The plan would ensure that the applicant has both a well-articulated understanding of the size and scope of the project it is undertaking and the financial capacity to obtain the necessary financing prior to the start of licensed activities. Further, the rulemaking would provide a process for the NRC to issue licenses with conditions to applicants that may have insufficient funding at the outset of the license application review. The license conditions would be such that the NRC’s review of a licensee’s compliance with them would be ministerial in nature.

Historically, the NRC review of FQ determined whether the applicant had adequate capital to construct and operate the plant safely. The review did not assess whether the project was financially viable or whether the project was likely to be completed. Indeed, some licensees have ceased construction for financial reasons. The current guidance in 10 CFR Part 50, Appendix C, calls for the applicant to describe, in detail, the legal and financial relationships with its stakeholders, corporate affiliates, or others (such as financial institutions) on which the applicant is relying for financial assistance. In addition, Appendix C calls for information to support the financial entity’s claim that it has the financial capability to meet its commitments to the applicant. The staff has determined that some of the information reviewed under the current FQ regulations would no longer be required, and the new proposed review standard should

¹³ *Nuclear Innovation North America LLC* (South Texas Project Units 3 and 4) CLI-16-02, 83 NRC 13 (Feb. 9, 2016).

¹⁴ Letter from Francis M. Akstulewicz, NRC, to Mark McBurnett, NINA, “Issuance of Combined Licenses for South Texas Project, Units 3 and 4,” dated February 12, 2016 (ADAMS Accession No. ML16033A010).

provide for more efficient FQ reviews for the various classes of applicants, while maintaining public health and safety. Appendix C to 10 CFR part 50 would be removed in its entirety.

Overview of Proposed Changes to NRC Regulations

The scope of the proposed rulemaking includes all entities that are subject to the FQ requirements in 10 CFR 50.33(f). This includes power reactor and NPUF applicants for CPs, OLs, and COLs, at time of initial licensing or license transfer. The purpose of the staff's review of FQ is to ensure that an applicant possesses or has the financial capacity to obtain funding, not to ensure that the project is completed.

Under the proposed rule, applicants with 50 percent or less of the necessary funding identified at the time of application would be subject to license conditions for future verification that sufficient funding is available prior to the start of licensed activities. The staff contemplated various levels of funding that would indicate that an applicant would be able to obtain the remaining funds needed. The staff has decided to establish a threshold at greater than 50 percent funding. Given the high costs of nuclear power plant construction and operation and the uncertainties associated with NPUF financing, the staff believes that an applicant that can demonstrate that it possesses greater than 50 percent of its funding at the time of application has made a reasonable and sufficient showing of financial capacity. The NRC expects that applicants with 50 percent or less funding would propose license conditions, similar to those approved for STP Units 3 and 4, to facilitate the NRC's review in verifying that funding is available prior to the start of licensed activities.

These proposed changes are specific to initial licensing and license transfers and would not affect current holders of a CP, OL, or COL. The proposed rule would revise 10 CFR 50.33(f) in its entirety. Other proposed changes include: 1) deletion of Appendix C to 10 CFR Part 50 and 2) clarifying edits to the regulations in 10 CFR 50.33(d). Staff would also delete the current provision in 10 CFR 50.33(f)(5) that authorizes the Commission to request additional financial information from licensees.

For the NRC to find that an applicant appears to be financially qualified, the applicant must, at the time of application, demonstrate its financial capacity by submitting an applicant financial capacity plan (AFCP) and construction and operation cost estimates, as appropriate. The AFCP and cost estimates would provide the NRC with adequate information to determine whether the applicant appears to be financially qualified. An applicant's financial capacity is not a predictive finding of the likelihood of an applicant ultimately obtaining financing. Rather, financial capacity reflects the applicant's level of understanding of the size and scope of the project, including the level of capital necessary to undertake the project and the experience, skills, and expertise required to obtain proper financing and ultimately finance the project, when appropriate. The regulatory basis includes details of the content and substance of the AFCP.¹⁵ The NRC will publish draft implementation guidance simultaneously with the proposed rule for public comment, and the proposed rule will include the details of the content and substance of the AFCP. Implementation guidance documents developed by staff in support of this rulemaking are addressed below.

¹⁵ Section 7.1, "New Review Standard—Appears To Be Financially Qualified and the Demonstration of Financial Capacity."

Reactors in Decommissioning

In SRM—SECY-13-0124, the Commission directed the staff to ensure that the FQ rulemaking would not result in any unintended consequences to the NRC's decommissioning funding regulations and to inform the Commission if any issues are identified during the examination of the decommissioning funding regulations.

The NRC proposes to amend its current reactor licensing FQ requirements of "reasonable assurance" to a review standard of "appears to be financially qualified" for construction and operation. This proposed change to FQ requirements would not affect the NRC's decommissioning funding requirements. As under the current regulations, all applicants would be required to demonstrate reasonable assurance that funds will be available to decommission the facility.

The proposed rule includes clarification regarding the submissions required for license transfer applicants for facilities in decommissioning. The submissions required for license transfer applicants for facilities in decommissioning are consistent with the NRC's decommissioning funding regulations in §§ 50.75, 50.82, and 52.110, as appropriate for the facility and the stage of decommissioning activities.

Proposed Changes to 10 CFR 50.33(f)

Clarifying language is added to the introductory language in 10 CFR 50.33(f). Electric utility applicants for a license to operate a utilization facility¹⁶ are exempt from FQ requirements and thus are not required to provide information sufficient to demonstrate FQ. Accordingly, current rule language in 10 CFR 50.33(f) excludes electric utility applicants, as defined in 10 CFR 50.2, for an OL from FQ requirements and identifies, in paragraphs (f)(1), (f)(2), and (f)(3), the types of applicants required to provide FQ information and the information that is to be provided. Current paragraphs (f)(1), (f)(2), and (f)(3) specifically identify applicants for a CP, non-electric utility applicants for an OL, and applicants for a COL, respectively, and identify the information currently required to meet the reasonable assurance FQ standard. These three paragraphs are being entirely replaced with revised paragraphs (f)(1), (f)(2), and (f)(3).

The proposed preamble paragraph (f) also addresses the Commission direction that the FQ rulemaking not result in any unintended consequences to NRC's decommissioning funding regulations. Accordingly, the proposed preamble paragraph (f) excludes two applicant types from the remainder of the requirements in proposed paragraph 50.33(f) as follows:

- 1) OLs or COLs for which the NRC has docketed the certifications regarding permanent cessation of operations and permanent removal of fuel from the reactor vessel required under 10 CFR 50.82(a)(1) or 10 CFR 52.110(a)(1) and (2), and
- 2) NPUFs that have permanently ceased operations.

This exclusion anticipates license transfer applications for power reactors and NPUFs entering decommissioning. Applicants for such license transfers are addressed in proposed paragraph (f)(5). For all other applicants identified in 10 CFR 50.33(f), the applicant would be required to provide information "sufficient to demonstrate to the Commission that the applicant appears to be financially qualified to carry out...the activities for which the permit or license is sought."

¹⁶ See 10 CFR 50.21(b) and 10 CFR 50.22, "Class 103 licenses; for commercial and industrial facilities."

Proposed 10 CFR 50.33(f)(1):

This paragraph addresses an electric utility's application for a CP or a COL. Proposed language in new paragraph (f)(1) identifies information that the applicant must submit to the NRC to address FQ requirements as part of its application, including a construction cost estimate of the facility and related fuel cycle costs and an AFCP. As with the current regulations, electric utility OL and COL applicants do not need to address FQ requirements for operations.

Proposed 10 CFR 50.33(f)(2):

This paragraph addresses applicants that are not electric utilities and the information that the applicant must submit to the NRC to address FQ requirements as part of its application. These proposed requirements apply to both merchant and NPUF applicants.

Proposed language in 10 CFR 50.33(f)(2)(i)(A) and (B) addresses an application for a CP and identifies information that the applicant must submit to the NRC to address FQ requirements, including a construction cost estimate of the facility and related fuel cycle costs, and an AFCP describing how these costs will be covered.

Proposed language in 10 CFR 50.33(f)(2)(ii)(A) and (B) addresses an application for an OL and identifies information that the applicant must submit to the NRC to address FQ requirements, including estimates for the total annual operating costs for the first 5 years of operation of the facility and an AFCP describing how these costs will be covered.

Proposed language in 10 CFR 50.33(f)(2)(iii) addresses an application for a COL and specifies that applicants applying for a COL must submit information in 10 CFR 50.33(f)(2)(i) and 10 CFR 50.33(f)(2)(ii) to address FQ requirements.

Proposed 10 CFR 50.33(f)(3):

The proposed rule would move the FQ requirements for NPUF licensees applying for license renewal from the current paragraph (f)(2) to new paragraph (f)(3), which would also address FQ for license renewal applicants other than NPUFs. The new 10 CFR 50.33(f)(3) would read as follows:

An applicant seeking to renew or extend the term of an operating license for a power reactor is not required to submit the same financial information that is necessary in an application for an initial license. However, applicants to renew or extend the term of an operating license for a non-power production or utilization facility must include the financial information that is required in an application for an initial license.

Also with regard to NPUFs, in a separate rulemaking effort, the staff is proposing to rescind the current FQ requirements in 10 CFR 50.33(f)(2) (proposed 10 CFR 50.33(f)(3)) that require submission of financial information at the time of license renewal for NPUFs. That rulemaking would eliminate license renewal for certain classes of NPUFs and streamline the renewal process for other classes. The rulemaking would eliminate FQ requirements at time of renewal for those latter classes. (See 82 FR 15643 for the NPUF proposed rule.) The comment period on the proposed NPUF rulemaking closed on June 13, 2017, and the staff is evaluating comments received. If a final rule is issued rescinding the current FQ requirements for NPUFs

at the time of license renewal, then the staff would remove the requirement in new paragraph (f)(3) that NPUF licensees provide FQ information at time of license renewal.¹⁷

Proposed Deletion of Current Provision in 10 CFR 50.33(f)(4):

The staff is proposing to delete the current requirement in 10 CFR 50.33(f)(4), which relates to legal and financial relationships between the applicant and stockholders or owners. The removal of the “reasonable assurance” standard obviates the need for the information required by this paragraph.

Proposed New Provision in 10 CFR 50.33(f)(4):

This paragraph requires CP, OL, and COL applicants with 50 percent or less of the necessary funding identified at the time of application to include proposed license conditions with their applications. The license conditions would allow the NRC to verify that sufficient funding has been obtained at least 60 days prior to the start of licensed activities. The staff’s confirmation of a licensee’s compliance with these license conditions would be ministerial. Staff would verify that funding has been obtained before licensed activities (i.e., construction or operations) begin.

Proposed Deletion of Current Provision in 10 CFR 50.33(f)(5):

The staff is proposing to delete the current 10 CFR 50.33(f)(5), which provides the Commission with broad authority to request additional financial information, as it considers necessary, to assess a licensee’s ability to continue the conduct of activities authorized by the license and to decommission the facility. The staff has rarely used this provision to request additional financial information from existing licensees. The staff proposes to delete this provision based in part on public comments received on the draft regulatory basis. One commenter questioned the need for 10 CFR 50.33(f)(5), stating that, to the extent it was intended to apply to operating licensees, it was both unnecessary and misplaced in the “contents of application” section under 10 CFR 50.33. Even without this requirement, the staff notes that the Commission retains broad authority under the Atomic Energy Act and NRC regulations at 10 CFR 50.54(cc), 50.54(f), and 2.102 to request information from its licensees and applicants as necessary to protect public health and safety. In addition to deleting this provision, the staff intends to rescind interim staff guidance OL/FR-ISG-2014-01, “Reviewing and Assessing the Financial Condition of Operating Power Reactor Licensees, including Requests for Additional Information,” dated February 17, 2015, consistent with the modifications that would be made in the final rule.

Proposed New Provision in 10 CFR 50.33(f)(5):

In SRM—SECY-13-0124, the Commission directed that the FQ rulemaking not result in any unintended consequences to the NRC’s decommissioning funding regulations. The proposed paragraph 10 CFR 50.33(f)(5) applies to power reactor and non-power production or utilization facility applicants for which the following conditions apply:

¹⁷ See the final sentence of current regulation at 10 CFR 50.33(f)(2).

- 1) an OL or COL for which the current licensee has certified permanent cessation of operations and permanent removal of fuel from the reactor vessel, and the NRC has docketed such certification ((f)(5)(i)), and
- 2) applicants for NPUFs for which the current licensee has permanently ceased operations ((f)(5)(ii)).

The language in proposed paragraph 10 CFR 50.33(f)(5) anticipates license transfer applications for facilities in decommissioning. In these cases, the applicant must submit information that demonstrates that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning and managing irradiated fuel. This maintains the current approach to license transfers in decommissioning and implements the Commission's direction to avoid unintended consequences from this rulemaking.

Proposed Changes to 10 CFR 50.33(k)

Current paragraph (k)(2) would be deleted, and current paragraph (k)(1) would be revised and redesignated as (k). Proposed revisions would clarify that the requirement in this section would apply only to *operating* power reactors and NPUFs and not to facilities in decommissioning. Accordingly, applicants for an OL or COL for a facility for which the NRC has *not* docketed the certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel required under 10 CFR 50.82(a)(1) or 10 CFR 52.110(a)(1) and (2), and applicants for an NPUF that have *not* permanently ceased operations, would continue to be required to submit information in the form of a report, as described in 10 CFR 50.75, indicating how reasonable assurance would be provided that funds would be available to decommission the facility. This distinction was necessary because of the addition of proposed new paragraph (f)(5), discussed above, which anticipates applications for transfers of licenses for power reactors and NPUFs entering decommissioning that will be subject to the decommissioning requirements, at a reasonable assurance standard, under 10 CFR 50.82. This revision does not affect the current requirements for applicants and licensees with respect to decommissioning funding.

Proposed Deletion of Current Appendix C to 10 CFR Part 50

The removal of the "reasonable assurance" standard obviates the need for the information required by this appendix. This proposed rule would adopt an FQ standard of "appears to be financially qualified," and the detailed financial information for CPs and COLs in this appendix would no longer be necessary.

Regulatory Analysis

The staff prepared a draft regulatory analysis (RA) (Enclosure 2) to determine anticipated costs and benefits of the proposed rule. In particular, the RA evaluates the costs and benefits associated with new requirements and the development of, or modifications to, NRC guidance. The RA concludes that the proposed rule would result in net benefits to future license applicants and license transfer applicants, in accordance with 10 CFR Part 50 and 10 CFR Part 52. The simulation analysis in the RA shows that the estimated mean benefit for this proposed rule is \$762,000, with 95 percent confidence that the total of estimated costs and benefits ranges from between (\$0.69 million) and \$2.93 million using a 7 percent discount rate. The results also show that there is a 73-percent likelihood that the proposed rule is cost beneficial. A reasonable

inference from the uncertainty analysis is that proceeding with the proposed rule represents an efficient use of resources and averted costs to the NRC and industry. The rule is deemed cost beneficial to industry.

Cumulative Effects of Regulation

The NRC is following its cumulative effects of regulation (CER) process by engaging extensively with external stakeholders throughout this rulemaking and related regulatory activities. Public involvement has included: 1) a request for comment on the draft regulatory basis document (80 FR 34559; June 17, 2015), and 2) two public meetings supporting the development of the draft regulatory basis document, held on April 29, 2015, and July 8, 2015.

On October 16, 2017, staff held a public meeting to discuss the preliminary proposed rule language and the implementing guidance documents. One attendee asked about the rigor with which staff will evaluate applicant submissions, including applicant financial capacity information, in meeting the “appears to be financially qualified” standard. In addressing this concern, staff expanded the scope of question number 2 within the “Specific Request for Comments” section within the *Federal Register* notice.

The NRC is requesting specific feedback on potential CER imposed by this rulemaking by posing additional questions in the *Federal Register* notice for the proposed rule.

Implementing Guidance

Upon Commission approval to publish the proposed rule, the staff will publish the draft guidance simultaneously with the proposed rule. The staff has developed the following draft implementation guidance documents to assist licensees in the implementation of the proposed rule.

- Draft Regulatory Guide (DG-9004), “Financial Qualifications for Power Reactors and Non-Power Production or Utilization Facilities” (new document)
- Draft NUREG-1577, Rev. 2, “Standard Review Plan on Power Reactor and Non-Power Production or Utilization Facility Financial Qualifications and Decommissioning Funding Assurance” (revision)
- Draft NUREG-1537, Part 1, Rev. 1, Chapter 15, “Format and Content” (revision)
- Draft NUREG-1537, Part 2, Rev. 1, Chapter 15, “Standard Review Plan and Acceptance Criteria” (revision)

The guidance documents are available in ADAMS under Accession Nos. ML17240A362, ML17237A161, ML17251A470, and ML17251A501, respectively.

Backfitting and Issue Finality Considerations

The NRC has determined that the backfit rule does not apply to this proposed rule. The changes to the regulations under consideration by the NRC would not meet the definition of “backfitting,” as defined in 10 CFR 50.109, “Backfitting” (also referred to as the “Backfit Rule”), nor would they be inconsistent with the issue-finality provisions of 10 CFR Part 52. The

changes described by the proposed rule would not constitute backfitting. The Backfit Rule is intended to ensure that, once the NRC issues a license, the NRC does not arbitrarily change the terms and conditions for operating under the license or in the regulations that applied when the license was issued. Accordingly, an applicant for a license (whether initial or transferred) has no backfitting protection until the license has been issued. Therefore, the backfit rule would not apply to this proposed rule, which would result in changes to the application requirements for COLs, CPs, and OLs.

RESOURCES:

This rulemaking is designated as a medium-priority rulemaking with Commission direction, in accordance with the NRC's Common Prioritization of Rulemaking process. Resources for the proposed and final rule are included in the New Reactors Business Line for fiscal years (FYs) 2018 and 2019. Resources beyond FY 2019 will be addressed through the planning, budget, and performance management process. The staff will prioritize these activities in a manner consistent with the current Common Prioritization of Rulemaking process and other priorities in the New Reactors Business Line.

RECOMMENDATION:

The staff recommends that the Commission approve the enclosed proposed rule (Enclosure 1) for publication in the *Federal Register*.

The following list describes activities related to publication of the proposed rule.

- (1) Upon Commission approval, the proposed rule will be published in the *Federal Register* for a 75-day comment period.
- (2) The staff has not prepared an environmental assessment for the proposed rule (see Section XI of Enclosure 1).
- (3) This proposed rule contains revised information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 et seq.). The staff will submit information collection requirements to the Office of Management and Budget for its review and approval on or immediately after the date of publication of the proposed rule in the *Federal Register*.
- (4) The staff will inform the Chief Counsel for Advocacy of the Small Business Administration of the certification regarding the economic impact on small entities and the reasons for it as required by the Regulatory Flexibility Act (Section VI of Enclosure 1).
- (5) The Office of Congressional Affairs will keep the appropriate congressional committees informed.
- (6) The Office of Public Affairs will issue a press release when the NRC publishes the proposed rule in the *Federal Register*.

COORDINATION:

The Office of the General Counsel has no legal objection to the publication of the proposed rule. The Chief Financial Officer has reviewed this paper for resource implications and has no objections. The staff will provide an information copy of the enclosed final *Federal Register* notice to the Advisory Committee on Reactor Safeguards after publication.

/RA/

Victor M. McCree
Executive Director
for Operations

Enclosures:

1. *Federal Register* Notice
2. Regulatory Analysis

PROPOSED RULE: FINANCIAL QUALIFICATIONS REQUIREMENTS FOR REACTOR LICENSING (RIN 3150-AJ43) DATED FEBRUARY 26, 2018.

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