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

March 1, 1989

MEMORANDUM FOR: Victor Stello, Jr.
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - BRIEFING ON FINAL RULE
ON EARLY SITE PERMITS; STANDARD DESIGN
CERTIFICATION; AND COMBINED LICENSES FOR
NUCLEAR POWER REACTORS, 10:00 A.M.,
WEDNESDAY, FEBRUARY 22, 1989, COMMIS-
SIONERS' CONFERENCE ROOM, ONE WHITE FLINT
NORTH, ROCKVILLE, MARYLAND (OPEN TO PUBLIC
ATTENDANCE)

The commission was briefed by the General Counsel and the staff on a recommended final rule on early site permits, certification of standard nuclear power plant designs, and combined construction/operating licenses for nuclear power plants (documented in SECY-89-036 and released at the meeting).

Prior to voting on the proposed final rule, the Commission requested the staff to comment on the recommendations made by the Advisory Committee on Reactor Safeguards in its letter dated February 15, 1989, and recommend any modification to the proposed rule believed appropriate.

(EDO)

(SECY Suspense: 3/6/89)

(Subsequent to the meeting, on February 24, 1989, the Office of the Secretary issued a correction notice to SECY-89-036 (attached) as discussed by the General Counsel at the meeting.)

cc: Chairman Zech
Commissioner Roberts
Commissioner Carr
Commissioner Rogers
Commissioner Curtiss
OGC
GPA
PDR - Advance
DCS - P1-124

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FEBRUARY 24, 1989

C O R R E C T I O N N O T I C E

TO ALL HOLDERS OF

SECY-89-036 - RULEMAKING ON EARLY SITE PERMITS, DESIGN
CERTIFICATION, AND COMBINED LICENSES
(COMMISSION ACTION ITEM)

PLEASE REPLACE PAGE 25 AND 38, ENCLOSURE 1 TO SECY-89-036,
WITH THE ATTACHED PAGES. THE CORRECTIONS COMPRISE OF THE
FOLLOWING.

PAGE 25: LINE 2 OF THE FIRST PARAGRAPH, DELETE THE WORD "NOT."
LINE 2 SHOULD READ: "COMPLIANCE BE REQUIRED ONLY
WHEN NON-COMPLIANCE WOULD HAVE AN ADVERSE...."

PAGE 38: LINE 5 OF THE SECOND PARAGRAPH, DELETE THE WORD
"ONLY." LINE 5 SHOULD READ: "DOE ARGUES THAT
THERE SHOULD BE NO...."

ATTACHMENTS:
AS STATED

THE SECRETARIAT

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The Commission is not adopting Bishop, Cook's Suggestion that
Compliance be required only when non-compliance would have an adverse
impact on safety. Licensees seeking relief from a design certificatio
n,
who believe that non-compliance would have no adverse impact on safety
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should request an exemption under 10 CFR 50.12. Neither is the
Commission adopting the suggestion of the U.S. Chamber Of Commerce tha
t
cost-benefit analysis be used to determine whether to impose backfits
on
designs to bring them into Compliance with applicable regulations. Th
e
Atomic Energy Act allows the Commission to consider costs only in
deciding whether to establish or whether to enforce through backfittin
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safety requirements that are not necessary to provide adequate protection. See UCS v. NRC, 824 F.2d 108, 120 (1987).

The final rule, like the proposed rule, permits applicants for combined licenses issued under the rule, and licensees of a plant built according to a certified design, to request an exemption under 10 CFR 50.12 from a rule certifying a design. Among the comments on the appropriateness of using • 50.12 in the standardization context were NIRS' comment that • 50.12 permitted exemptions at a "whim" and DOE's suggestion that no exemptions should be granted at all. Out of respect for the unforeseen, the Commission has decided to adhere to • 50.12, but the final rule does require that, before an exemption can be granted, the effect which the exemption might have on standardization and its safety benefits must be considered.,

As a further guard against a loss of standardization, the final rule, again like the proposed rule, also prohibits a licensee of a plant

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Power Reactor Development CO. v. Electrical Workers, 367 U.S. 396 (1961), is not to the contrary. The issue in that case was not whether the Commission had the authority to combine a construction permit with a conditional operating license, but whether the Commission could postpone the Ultimate safety findings until construction was complete. The Court ruled that the Commission could, and found support for its conclusion in Section 185, which showed, the Court said, that "Congress contemplated a step-by-step procedure." 367 U.S. at 405. But the Court did not say, "Section 185 mandates a separate issuance of an operating license, notwithstanding Section 161h." The interpretation of Section 161h of the Act was not at issue.

b. Hearings After Construction is Complete

The first issue concerning hearings after completion of construction

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under a combined license is whether there should be such hearings at all. Most commenters, whatever their-affiliation, believe that there should be the opportunity for such hearings. They disagree only over how limited the hearings should be. DOE argues that there should be no such hearings at all. As the principal support for its argument, DOE cites the section of the Administrative Procedure Act (APA) which says
,
in effect, that adjudication is not required in cases In which the agency decision rests "solely on inspections,, tests, or elections". See 5 U.S.C. 554(a)(3). Under Part 52's provisions on combined licenses, a combined license will contain the tests, inspection, and analyses, and acceptance criteria therefor, which are necessary and sufficient to provide reasonable assurance that the facility has been constructed and