

September 17, 2001 (3:59PM)

ENVIRONMENTAL COALITION ON NUCLEAR POWER

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

September 11, 2001

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

<http://ruleforum.11n1>

RE: 66 FR 19609-671 Proposed Rule:
Changes to Adjudicatory Process

ATTN: Rulemakings and Adjudications Staff

Dear Madam or Sir:

Please enter into the Nuclear Regulatory Commission's (NRC) record in the Rulemaking Proceeding cited above the following comments which are supplemental to the consolidated comments of Mr. Jonathan M. Block and Mr. Stephen Saltonstall, Attorneys at Law. Their consolidated comments are filed on behalf of the Pennsylvania-based Environmental Coalition on Nuclear Power (ECNP) and others. These ECNP supplemental comments are intended to provide extra emphasis to some of the points of particular concern to our organization.

ECNP strongly opposes the Commission's proposed deformatization [sic] -- i.e., the curtailment or elimination altogether -- of adjudicatory proceedings for NRC licensing, license modifications, and other purposes for nuclear power reactors, nuclear materials, irradiators, decommissioning, and radioactive waste deregulation and disposition, and for any other actions.

We respectfully request that the NRC withdraw this proposal and, instead, remove the various impediments that the Commission's regulations at 10 CFR Part 2 now place in the way of full and effective public participation in NRC administrative law proceedings. In the absence of adjudicated proceedings, members of the public, all of whom are, or may be, either directly or indirectly affected by the outcomes of NRC's decisions, will be deprived of the opportunity to gain access to information through discovery and to compile a sound, complete hearing record based on sworn testimonies and cross-examination of witnesses.

The Commission's proposed action -- to rely, at its discretion, on mere "informal meetings" and "informal hearings" -- appears to be in clear violation of the provisions of the Federal Administrative Procedure Act that guarantees to citizens the benefits of judicial processes and safeguards. These proposed changes to adjudicatory process, if adopted and implemented, would be arbitrary and capricious beyond a doubt and would be contrary to the Administrative Procedure Act and the Atomic Energy Act.

The NRC's arguments favoring abandonment of formal proceedings (and procedures), as presented in the Background section, lack substance, relying instead on arbitrary rejection and reversal of the Commission's own opening statement that "Among the first actions taken by the [NRC]... in 1975, was an affirmation of the fundamental importance it attributes to public

participation in the Commission's adjudicatory process." Moreover, the Commission goes on to state that "One of the cornerstones of the NRC's regulatory approach has always been ensuring that its review processes and decisionmaking are open, understandable, and accessible to all interested parties."

While members of the public, as "stakeholders" (and we aver that all members of the public, being in one way or another affected by the Commission's actions, are legitimate "stakeholders") may appreciate invitations to Commission meetings and workshops, these forums for "input" in no way substitute for formal, legal proceedings with full participation and judicial protections. These safeguards are – or should be – operative equally for all parties in a proceeding, working to assure a fair and full record and decision for applicants and licensees, as well as for public-interest intervenors or other branches of government. Formal adjudicatory hearings serve also to safeguard the interests of the agency in reaching a supportable outcome.

Although a "trial-type" proceeding may indeed become "adversarial" and protracted, and very costly (especially for insufficiently-funded citizen groups), the Commission offers no evidence for its statement that "... experience suggested that...use of formal adjudicatory procedures is not essential to... an adequate hearing record...." An "adequate hearing record" is not defined. "Adequate" how? For whom? Reducing the "burden of litigation costs" is not the purpose of a rulemaking hearing, as the NRC suggests. Enhancing the role of a presiding officer to control development of a hearing record is no justification for denial of the right of all parties to present their experts' sworn testimonies and to cross-examine the witnesses of other parties.

The NRC states but provides no evidence that "...there have been some aspects of the informal procedures that... prolong the proceeding without...enhancing the decisionmaking." So vague and undefined a statement cannot be used to justify elimination or curtailment of judicial practices applicable to promulgation of a federal regulatory agency's formal regulations. The basic purpose of these proceedings is not to improve their "speedy completion," but rather it is to create a full record that assures the safety of the operation of a nuclear facility and the safe isolation of radioactive materials and wastes from the biosystem.

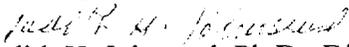
In sum, the arguments offered by the NRC do not support the agency's claim that full adjudicatory hearings are not required by law, or are not more likely to produce a better record, or will not better protect the safety of the public and the environment. The Atomic Energy Act of 1954 as amended mandates the control of nuclear energy and the protection of the health and safety of the public. An adversarial process affords all participants opportunities to explore the evidence and refute insupportable claims, and to produce a full and accurate (not merely "adequate") record. Upon such a record, the NRC's Licensing Board is then far better able to make a sound decision that is in the paramount objective of fulfilling the primary interest of facility safety for the public. In the event that any participant finds that a record is not "adequate" or truly sound and complete, that party needs to have a complete record that can then be appealed to a federal Court. Surely the NRC also wants a record that meets the Commission's legal obligations and can be upheld.

September 14, 2001

Due to other obligations, at the close of this dark week in our nation's history, I cannot complete all of the supplemental comments that we wish to submit to the NRC on this Proposed Rule. Please accept the ones above. I will try to send the remainder of our additional comments on behalf of ECNP within a few days and respectfully request that they be added to these as, if you will, supplements to this supplement and be considered by the staff. These ECNP supplemental comments are being submitted electronically on Friday, September 14, 2001, and are being deposited in the U.S. mail, first class, postage paid on this same day, in order to comply with the NRC's deadline.

I hope that the Commission will act upon these and the consolidated comments of Mr. Block and Mr. Saltonstall by withdrawing this Proposed Rule and restoring full rights of participation and judicial safeguards for the public in all NRC proceedings. In the aftermath of the presumed terrorist attack on September 11th, it is all the more important for our government to take no actions that diminish our citizens' Constitutional rights. Thank you.

Sincerely,


Judith H. Johnsrud, Ph.D., Director
Environmental Coalition on Nuclear Power