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Rules and Directives
Branch
USNRC

Michael Lesar, Chief,
Rules Review and Directives Branch
Division of Administration Services
Office of Administration
US NRC
Washington DC 20555.

Dear Chief Lesar:

1. There are only two ways the NRC can make decisions that bind interested members of the public: through the hearing process, or through rulemakings. This Federal Register notice does not comply with NRC procedures or basic concepts of fairness for either a hearing or a rulemaking.

a. LES is trying to hijack the hearing process, by asking the Commission to pre-judge the outcome of a hearing before the case has even started. At this point, no opportunity for a hearing has been noticed in the Federal Register. Thus, local residents have not been notified that the Commission is considering decisions that would affect their welfare. To grant LES' request to make binding decisions based on the white papers would completely violate NRC hearing procedures.

b. Where there is no licensing case pending, the NRC can use the rulemaking process to make decisions that affect the interests of people who reside near nuclear facilities. But the NRC has to comply with basic procedural requirements of the Federal Administrative Procedures Act and NRC regulations. In particular, the NRC must present a specific proposed action by the agency, and a justification for the action. The October 2 Federal Register violates this requirement because it just asks for comments on LES's white papers, and does not say what the NRC proposes to do with them. Thus, it completely fails to meet the requirements of the federal Administrative Procedures Act and basic concepts of fairness in agency decision making.

2. The white papers are totally inadequate to resolve the issues they address. The only fair way these six issues can be addressed is through the licensing process. If the NRC decides that it can resolve them through a rulemaking, then it should propose a specific resolution of the issues and explain why it is not necessary to use the hearing process to get at the specific facts of the case.

3. The publication of the white papers raises serious questions about whether the NRC can act as a dispassionate appellate judge in any licensing case involving the proposed LES plant. The NRC appears to be going along with an LES proposal that it pre-judge every significant issue in the licensing case. How can an agency that departs from its own well-established procedures, for the purpose of pre-judging virtually all the important issues in a case, be considered to be objective as the ultimate appellate tribunal in the case?

Sincerely,

Art Hanson

Art Hanson

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FILES = ADM-03
Add = T. Johnson (TC5)