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**Draft Statement of Policy on Conduct of  
New Reactor Licensing Proceedings (72FR32139)**



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USNRC

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

ATTN: Rulemakings and Adjudications Staff

Subject: UniStar Nuclear Comments on "Draft Statement of Policy on Conduct of New Reactor Licensing Proceedings," 72 Federal Register 32139 (June 11, 2007)

UniStar Nuclear appreciates the opportunity to comment on the "Draft Statement of Policy on Conduct of New Reactor Licensing Proceedings," published in volume 72 of the Federal Register (FR), page 32139, on June 11, 2007. UniStar Nuclear may have additional comments beyond those in this letter. In that case, we will submit an additional comment letter on or before August 10, 2007. While UniStar Nuclear generally supports the NRC's efforts to craft a fair and efficient framework for litigation of disputed issues and to implement the NRC's goal of avoiding duplicative litigation through consolidation to the extent possible, UniStar Nuclear considers that certain aspects of the policy statement appear to be inconsistent with the NRC's policy objectives for new reactor license applications.

UniStar Nuclear currently intends to submit a phased Combined License (i.e., COL) application as permitted under both the existing and proposed 10 C.F.R. 2.101, "Filing of application," paragraph (a)(5) by the end of June, 2007. However, the comment period on the draft policy statement does not close until August 10, 2007. As a result, the NRC will not have published its final policy statement until after UniStar Nuclear submits its partial COL application under section 2.101(a)(5). Accordingly, UniStar is submitting these comments early in the comment period so that the NRC may consider them in advance of UniStar Nuclear's submittal.

In accordance with section 2.101(a)(5), an applicant for a COL may submit the required information for a COL in two parts: (1) one part shall be accompanied by the necessary environmental information — that is, the Environmental Report (ER), and (2) one part shall include the necessary safety-related information — that is, the Safety Analysis Report. According to the rule, whichever part is submitted first should also include certain other information (e.g., fees, financial qualifications, decommissioning funding information). Under the current rule, one part may precede or follow other parts by no more than six months. Under

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the proposed changes in the Limited Work Authorization (LWA) rulemaking, that time limitation would be extended to 18 months. The NRC will accept for docketing an application for a COL where one part of the application as described above is complete and conforms to the requirements of 10 C.F.R. 2.101(a)(5). Each additional part will be docketed upon a determination by the NRC that it is complete. This is a phased COL submittal process.

If the NRC determines that a submitted application for a construction permit or operating license for a utilization facility, and/or any ER, "or part thereof as provided in paragraph (a)(5)" are complete and acceptable for docketing, a docket number will be assigned to the application or part thereof, and the applicant will be notified of the determination.

Once an application is docketed, the NRC must establish a schedule for its review of the application, specifying the key intermediate steps from the time of docketing to the completion of its review as specified in 10 C.F.R. 2.102, "Administrative review of application," paragraph (a). Because an application is considered "docketed" as soon as one part of the application is complete, the NRC will establish a schedule and begin its review immediately, without awaiting the submission of the remaining part of the application.

The draft Policy Statement suggests that the NRC will delay publication of a notice of hearing until both complete portions of a COL application are docketed, even if the two complete portions are submitted 18 months apart. UniStar Nuclear has concluded that the NRC should instead issue a separate notice of hearing for each "complete" part of an application submitted under 10 C.F.R. 2.101(a)(5) and docketed. This approach lessens the resource, schedule, and litigation burden on NRC Staff, the Licensing Board, applicants, and potential intervenors. This approach also promotes the NRC's stated goals in the draft Policy Statement of increasing effectiveness and efficiency in the licensing review and hearing processes. Contrary to the conclusion in the draft policy statement that it is most efficient to issue a Notice of Hearing only when the entire application has been docketed, the publication of two notices of hearing under 10 C.F.R. 2.101(a)(5) has the following advantages.

- Provides an earlier opportunity for public participation on environmental matters that are typically of greater interest to intervenors.
- Distributes NRC Staff and Licensing Board resources more efficiently by "smoothing" the peak resource demands on the NRC.
- Reduces the number of simultaneous hearing requests under consideration by the Licensing Board.
- Offers the NRC Staff an early opportunity to consider and address those environmental issues that are unique to COL applications so that those lessons can be applied to later COL application reviews.
- For UniStar Nuclear, this approach helps lessen the potential for the NRC's environmental review to be the "critical path" for licensing.
- Focuses all parties on results, not process.

- Does not eliminate or reduce any opportunities to request a hearing or create any new or different NRC Staff or Licensing Board reviews. NRC Staff support of a hearing request on an early ER submittal is no different than for a complete COL application.
- This approach is also consistent with the NRC's intent to publish separate notices of hearing for LWA requests and requests for early review of site suitability issues.

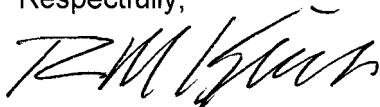
As a practical matter, it is not difficult to segregate the environmental findings that would be identified in the first Notice of Hearing from the matters of radiological health and safety that would be included in the second Notice of Hearing. This is because those findings are clearly identified in Part 2, specifically 10 C.F.R. 2.104, "Notice of hearing," notes 2 and 3 that list the findings required under the Atomic Energy Act and those required under the National Environmental Policy Act. Moreover, the treatment of environmental and safety issues on separate hearing tracks is not even unusual; indeed it is normal practice. Licensing Boards have a long-standing practice of treating environmental and safety issues separately. Most recently, in the LES proceeding, the Commissioners directed (LES Hearing Order, n. 3) the Board to adopt separate schedules for the safety and environmental reviews. (See also, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132 (1983)).

It is unlikely that the approach suggested by UniStar Nuclear would have significant unintended consequences for future submittals. However, failure to adopt this approach — that is, adopting the draft Policy Statement as written — would foreclose achieving the benefits discussed above.

Taken together, the approach suggested in these comments achieves the stated goals of the draft Policy Statement: consolidation of reviews to the extent practicable without any duplication of NRC Staff, Licensing Board, applicant, or intervenor resources. By initiating an early review of all environmental issues in a single proceeding (i.e., avoiding the piecemeal litigation of separate LWA and full-scope environmental documents), the NRC will be able to more efficiently meet the resource and timing challenges of the anticipated COL application submissions and more effectively conduct those licensing reviews. This approach does so without duplication of NRC Staff, Licensing Board, applicant, or intervenor resources. In short, the suggested change to the draft Policy Statement clarifies that a simpler, comprehensive approach is available for those applicants that have prepared an ER and are ready to begin the adjudicatory process.

If you have any questions, please contact me at (410) 864-6441.

Respectfully,



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June 20, 2007  
UN# 07-006  
Page 4

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