

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



**Union of
Concerned
Scientists**

Citizens and Scientists for Environmental Solutions

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ADJUDICATIONS STAFF

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Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
By e-mail to: SECY@nrc.gov

**SUBJECT: Comments on Draft Statement of Policy on Conduct of New
Reactor Licensing Proceedings, 72 FR 32141 (June 11, 2007)**

Dear Ms. Vietti-Cook:

Kindly convey the following comments concerning the above referenced proposed "Policy" to the appropriate persons within your agency. We hereby incorporate by reference the Comments of Ms. Diane Curran, Esq., filed with you on this day, and further set forth as follows.

The alleged goals of the NRC's new policies include "fairness" to the parties as well as expediency of the proceedings (often deemed "efficiency" in the proposed Policy at issue). The reality of the Commission's proposed "policy" is to effectively eliminate any meaningful opportunity for public participation in the process of licensing new reactors. This will be achieved by allowing, nay encouraging, the licensees, even under the stern admonition that "the Commission strongly discourages piecemeal submission of portions of an application," to seek exemptions from the existing rules¹ that make holes through which they may drive the proverbial Mack truck. The ink on the new Part 52 rules is not dry, yet, while strongly discouraging piecemeal litigation (wink, wink, nudge, nudge) the Commission tells the nuclear industry that it "would be favorably disposed to the NRC staff's entertaining a request for an exemption from the requirements of § 2.101." Thus, apparently, the new rules really would be best applied by the NRC staff "entertaining" who knows how many discretionary exemptions in the name of a more efficient (i.e., full-speed ahead, public be damned) "design-centered review approach." If that is not adequate "service" to the nuclear industry, why not also bifurcate the notice procedures?

Again, with lip-service to it "being most efficient" to issue a Notice of Hearing "only when the entire application has been docketed" (wink wink, nudge, nudge) the Commission provides the nuclear industry with two more exceptions under which it

¹ At this writing it is not clear whether the final new Part 52 rules have actually been released to the public.

“may give notice of the hearing on the complete application” (one supposes that it also may not do so?) and “give notice of the hearing on the other application with respect to the matters common to the complete application.” If this were not confusing enough, again, with the (wink, wink, nudge, nudge) intention of avoiding “piecemeal litigation,” the Commission states it will upon “submission of information completing the other application ... give notice [of] hearing with respect to that information.” At this point, incredibly, the Commission adds that “in all other cases” (how many will be left??) it will issue the notice of hearing “only when a complete application has been docketed in order to avoid piecemeal litigation.”² Who are you kidding?

The same considerations apply to the “Consolidation of Issues Common to Multiple Applications,” the “Referencing Design Certification Application” and “ITAAC”. Beginning with the last, it is not an insubstantial change in the rules to now state that the Commission, presiding officer of any request for hearing filed under §52.103, will, by fiat, “designate the procedures under which the proceeding shall be conducted.” This means that potential parties must await word from the Red Queen as to whether procedures mandate entertaining or beheading. One would hope that a bit of rule-making might be in order (under whatever semblance of Due Process Clause remains under current interpretations of the United States Constitution) well before commencement of extraordinary hearings before the Commission. After all, even the sections of the Administrative Procedure Act that apply to the NRC, appear, at a minimum, to require procedures for hearing be fully articulated through notice and comment rulemaking before they are applied--not justified by Commission fiat as *post hoc, ergo propter hoc*.

The “exception” provided in COL Applications that will permit use of the “custom design” is yet another hole in the regulatory dike. The referencing process creates a Chinese menu application with many potential hearings on each and every selection. Moreover, as “the underlying element of the design may change after the exemption request is submitted, such an exemption may ultimately become unnecessary or may need to be reconsidered or conformed to the final design certification rule.”

Why not, in the name of efficiency and fairness, wait until the application process is complete before holding a hearing--one hearing--on a completed design and completed application for a specific reactor site?

² Given the fact that it is already receiving requests for such exemptions--e.g., UniStar for the new Calvert Cliffs application--*before* this proposed policy has been vetted in the public comment process, and the fact that the NRC staff has chosen to hold a public meeting explaining the way this new policy will work only four days after the close of the public comment period on it, it is a safe bet that only the “Public” is in the dark about how the Commission will rule on the proposed policy changes.

Instead, by instituting yet another series of proceedings in which interested members of the public must participate in order to have standing to be involved in the final process at a particular site, the Commission sanctions extremely costly and time-consuming multiple proceedings in the name of what it deems “efficiency”. Who but the owners of nuclear utilities (and, perhaps, some of the larger state governments) could afford to participate in multiple, scattered hearings? Surely, again, this choice by the Commission is designed solely to convenience the nuclear industry and will have the NRC staff “entertaining” a steady stream of exemptions under the guise of “custom designs.”

The Treatment of Generic Issues, may, however, provide the most effective obstacle to meaningful public participation in the hearing process on new reactor licenses. Under this approach, the application is broken down into subatomic pieces. Interested members of the public will need to chase after every potentially applicable piece in proceedings held at whatever plant in whatever location they might take place. All that, just to be permitted to take a stab at participating in proceedings over issues that may (or may not) affect a license application in their locale. Again, when Subpart D--which the Commission touts for its applicability in this context--was promulgated in 1975, potential participants had a full panoply of hearing rights under 10 CFR Part 2. Now, without the formal procedure once available to them, members of the public--including state and local governments--will need to guess what reactor license may be coming in their state or locality and, on that basis (and perhaps some form of divination?), take a shot in the dark choosing in which generic proceedings to become involved. Uttering the word “fairness” in the context of discussing this approach to licensing defies common sense (or any sense at all, for that matter).

The only ones entertained and served by this special “fairness” will be the nuclear industry. How can the Commission possibly respect the requirements of the Atomic Energy Act concerning security and, at the same time, encourage a process that will make it nearly impossible to adequately consider new reactor designs in the context of site-specific characteristics of each application? Encouraging generic “variances and exemptions” from certified designs and endorsing the notion that “security” considerations in reactor siting are ever “identical” from one site to another flies in the face of the commonly accepted view that each piece of land is unique. Plainly, a reactor on the sea has very different security considerations from one on an inland lake or river; different, again, from a reactor on a cliff or in a valley. To encourage licensees to seek variances, exemptions, and generic licenses based on the premise that only components are at issue without reference to where they are located is, in a Post-9/11 world, burying one’s head in the sand.

If the Commission needs to encourage, under the guise of a policy statement, myriad exemptions to the new Part 52 rules, the new Part 52 rules patently need revision.

A final observation is in order. Given that the Commission has stripped away nearly all opportunities for meaningful public participation in the licensing hearing process by eliminating party access to full and fair discovery procedure and cross-examination of adverse witnesses, there is grave danger to implementing the policies at issue. As Attorney Curran mentioned in her comments, back in the day when the public actually had a hearing right or two, Atomic Safety and Licensing Board judges recognized the contributions of ordinary persons intervening in the hearing process. Such persons, in fact, made substantial contributions to the licensing process by unearthing serious public health and safety problems. The proposed policies, however, will make the notion of the availability of any opportunity for meaningful public participation in the NRC reactor licensing process a complete travesty. With public examination and criticism hermetically sealed from the process, the Commission will achieve only one goal: efficiency. If the sole rationale is to license as many reactors as possible in the shortest period of time without permitting opposition, criticism, or, even, dissenting opinions, then it will have achieved that goal. If the purpose is to carry out the intentions of Congress under §2239 of the Atomic Energy Act, that end will be completely and finally thwarted.

For the above reasons, and those contained in the incorporated letter of Ms. Diane Curran, Esq., we ask that the Commission withdraw the proposed policy and commence an appropriate notice and comment rule-making on the matters at issue, including restoration of party access to both full and fair discovery and cross-examination of adverse witnesses in the hearing process.

Respectfully submitted:



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Date: Fri, Aug 10, 2007 3:50 PM
Subject: Comments on Draft Statement of Policy on Conduct of New Reactor Licensing Hearings

To Whom It May Concern:

The attached PDF of a signed letter of comment in the above referenced matter is provided for filing in the docket for these comments.

Thank you.

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Subject: Comments on Draft Statement of Policy on Conduct of New Reactor
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Creation Date Fri, Aug 10, 2007 3:49 PM
From: "Jon Block" <jblock@ucsusa.org>
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Expiration Date: None
Priority: Standard
ReplyRequested: No
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Message is eligible for Junk Mail handling
This message was not classified as Junk Mail

Junk Mail settings when this message was delivered

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