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Statement of NRC Chairman,

Lando Zech, Jr.,

to the US House of Representatives

(1989)

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U.S. House of Representatives
Committee on Energy and Commerce

SUBCOMMITTEE ON ENERGY AND POWER

Washington, DC 20515

PUBLIC HEARING

DATE AND TIME: May 11, 1989, 10:00 a.m.
PLACE: 2226 Rayburn House Office Building
SUBJECT: The Nuclear Regulatory Commission's final rule on
standardization and licensing reform

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STATEMENT
SUBMITTED BY

THE UNITED STATES NUCLEAR REGULATORY COMMISSION

TO THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING
RULEMAKING ON EARLY SITE PERMITS, DESIGN
CERTIFICATIONS AND COMBINED LICENSES

FOR THE
NUCLEAR REGULATORY COMMISSION

PRESENTED BY
LANDO W. ZECH, JR.
CHAIRMAN

SUBMITTED: MAY 11, 1989

Mr. Chairman and members of the Subcommittee, the Commission is pleased to have the opportunity to appear before you today to discuss the final rule on early site permits, design certifications, and issuance of combined construction permits and operating licenses for nuclear power reactors. As you were previously informed, Commissioners Carr and Rogers will not be with us today. Accompanying us is the NRC's General Counsel, Mr. William Parler.

The final rule was published on April 18, 1989, and becomes effective on May 18, 1989. The rule provides for the early resolution of virtually all licensing issues before the commencement of construction of a nuclear plant. It strongly encourages the use of essentially complete standardized designs, simplifies and expedites the NRC licensing process, provides for earlier and more meaningful public participation, and provides greater assurance that if a plant is constructed in accord with the acceptance criteria in the license, it will be allowed to commence operation without delay.

We would like to briefly describe the major elements of the rule.

The new rule provides for standardization of nuclear power plant designs and the early resolution of licensing issues. It is being promulgated with the expectation of enhanced safety and reliability from the new designs and an improved licensing process in which licensing issues are fully resolved before construction of the plant begins.

A central feature of the new rule is its provision for Commission certification of essentially complete standard designs in rulemaking proceedings. The rulemakings will employ hearing procedures best tailored to the issues presented. During the 15 years that a design certification is in effect, the

certified design will possess a high degree of stability and finality. Once a design certificate is issued by the Commission, no changes will be imposed or permitted unless such changes are necessary for adequate protection of public health and safety. This degree of finality is justified by the enhanced safety which the Commission expects from designs brought forward for certification and by the safety benefits which standardization itself can be expected to bring.

Standardization also makes possible a more efficient licensing process. By referencing a certified standard design, a utility applicant may easily combine an application for a construction permit with an application for an operating license and thus receive a combined construction permit and operating license which resolves design issues before construction begins. If several utility applicants reference the same design, a single certification rulemaking will have in large part served the purpose of several operating license proceedings. This is a major improvement over our current licensing process wherein plants are authorized to begin construction with incomplete designs and with safety issues remaining to be resolved.

The rule also provides for the issuance of early site permits, which are Commission approvals of sites in the absence of a specific design, but on the basis of a range of design features. A site permit is good for up to twenty years. Once a site permit is issued by the Commission, no changes will be imposed or permitted unless such changes are necessary for adequate protection of public health and safety. The provisions on early site permits make it possible for utility applicants for construction permits, or combined licenses, to combine an approved site and a certified design and thereby have resolved

the bulk of the licensing issues before the commencement of the combined license proceeding.

The final rule's provisions on combined licenses provide for the resolution of nearly all licensing issues before construction begins. The siting and design issues which were previously resolved will not be reopened. Therefore, the major focus of a combined license proceeding will be the issues associated with the actual interface of the approved design to the approved site. A good example of such an interface is the adequacy of the design of the water intake structure. Also, in keeping with a recommendation of the National Governors' Association, a combined license may be granted only after NRC approval of emergency plans. The combined license will also incorporate a program of tests, inspections, and related acceptance criteria which are necessary and sufficient to show that the plant has been properly built.

The final rule provides for the staff's close monitoring and phased approval of construction. When construction under a combined license is complete, the only licensing issue which will remain is whether the plant has been built in accordance with the acceptance criteria incorporated in the license. A utility, thus, can be granted a combined license and be confident of being permitted to proceed to operation once the Commission makes the necessary finding that the plant has been built in accord with the criteria incorporated in the combined license.

There will be an opportunity for a hearing after construction in a very limited area. The Administrative Procedure Act exempts from hearings issues which can

be decided on the basis of tests and inspections. The opportunity for a hearing concerns only the question whether the licensee has satisfactorily complied with the acceptance criteria in certain specific respects. If, however, an interested party, in the judgment of the Commission, raises genuine questions of material fact about compliance with the acceptance criteria, the Commission would then have to decide how to proceed. It would probably seek to have the matter resolved by informal means. If this were not feasible in the Commission's judgment, only then would it resort to a hearing, and if it did, it would specify the issue to be addressed and the appropriate procedures. We would expect a hearing which would delay operation to be an extremely rare case.

The rule's provisions on combined licenses thus remove a great deal of the uncertainty in the licensing process for a given plant which has received a combined license. It may reasonably be expected that construction under a combined license could be completed in six years or less.

The Commission carefully tailored the rule to provide the public with ample opportunity to participate meaningfully in the licensing process, yet at the same time provide a process that should lead to licensing decisions being made with finality within a reasonable time frame. The final rule fully recognizes the rights of all parties involved in the licensing process. Indeed, the rule's central emphasis on the early resolution of licensing issues benefits all the parties, while giving the Commission fully sufficient means to assure adequate protection of the public health and safety.

Under the regime established in the rule, the affected public will participate in the resolution of the same issues it participates in resolving now, but it will have the added advantage of being able to consider a whole design before construction begins. Under prior agency rules, construction frequently commenced before the plant had been fully designed. The same early resolution of issues also benefits utilities by greatly reducing the uncertainty a utility might otherwise face in the later stages of construction.

In order to implement a process for the early resolution of issues, the final rule establishes a number of restrictions on the way in which issues, once resolved, can be reconsidered in the course of the licensing process for a given plant. For example, design issues resolved in a rulemaking proceeding on certification of a standard design generally cannot be raised again in a licensing proceeding. Resolution of site issues, including site-specific design issues and emergency planning issues, arrived at in the course of a proceeding on a combined license cannot afterwards be challenged in the licensing process.

The same is true of issues concerning the detailed quality assurance programs which will be incorporated in combined licenses. Affected members of the public seeking to reopen issues, once resolved, must petition the NRC to take action under 10 CFR § 2.206. This approach is similar to the approach that the Commission currently employs where members of the public seek to reopen issues, once those issues have been resolved by the Commission.

Regarding the opportunity for a hearing before operation once a combined license has been issued, if a plant built under a combined license satisfies the acceptance criteria in the license, there will be no hearing on the adequacy of construction. Given the rules's efforts to ensure that a satisfactory inspection program is established by each holder of a combined license, and that the staff closely monitors construction and approves it in stages, we are justified in expecting that the facilities will be built in accordance with the terms of the combined license.

If a plant is constructed in compliance with the acceptance criteria, there should be no need for a second hearing concerning whether the plant has been built in accordance with the combined license. In the face of a non-conformity with the criteria in a combined license, the Commission could move quickly to resolve the issues by effective and efficient means. In most cases, we would expect the licensee to readily agree to correct the deficiencies. A hearing would be resorted to only when a genuine issue of material fact regarding a non-conformity with the license was raised which could not be resolved in less formal ways and which was not exempted from adjudication by the Administrative Procedure Act.

In such a hearing, we can state emphatically that no design or site issue resolved in earlier stages of the proceeding would be reopened. The sole issue for the hearing would be compliance with the acceptance criteria, and then only if a hearing were the only means available for the Commission to resolve the matter.

The rights parties have to appeal unfavorable Commission decisions are established largely by Section 189 of the Atomic Energy Act and by long standing practice. As applied to the procedures set forth in the final rule, Section 189 would result in earlier judicial review of Commission decisions than it does under the current licensing process. This will contribute to the stability of the licensing process. For example, under the current process, judicial review of Commission decisions on many of the design issues in a licensing proceeding is not available until the operating license is granted. However, under the new process, judicial review would be available as early as the end of a certification rulemaking on a standard design, and, for design issues not resolved in a certification proceeding, no later than the conclusion of a proceeding on a combined license. Similarly, the final rule's provisions on early site permits will result in judicial review of decisions on site suitability issues at an earlier phase of the process.

The Commission is confident that the final rule as presently structured provides a sound basis for the efficient construction and licensing of new, safe nuclear power plants. The Commission is confident that the final rule rests on a solid legal foundation and will fully accomplish its purposes. The Commission believes that it is necessary to give the rule an opportunity to

work. Accordingly, at this time, the Commission does not believe that additional legislation is necessary to accomplish the objectives of the Commission's recently approved standardization and licensing reforms.

Mr. Chairman, this completes our testimony. We shall be pleased to answer any questions you may have.