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Rules, Announcements, and Directives Branch
Office of Administration
Mailstop: 3 WFN-06-44M
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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July 2, 2014

Subject: Comments on "Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses are Met" (Docket No. NRC-2014-0077) (79 Fed. Reg. 21958 (April 18, 2014))

Dear Ms. Bladey,

I am providing these comments on certain aspects of the proposed procedures set forth by the Nuclear Regulatory Commission in the above-captioned Federal Register notice. In particular, these comments provide background on what is at stake in that portion of the rulemaking involving the interim operation of a nuclear power plant upon completion of construction.

The single stage combined license (COL) process in Part 52 resulted from the failure of the Part 50 two- step licensing process to provide stability and predictability in nuclear licensing. In particular, there were numerous instances where fully completed nuclear plants were held hostage to the operating license proceedings and were not permitted to begin operation except after long delays caused by the NRC licensing process.

If the ITAAC hearing procedures adopted by the Commission recreate the failures of the two-step licensing process, Part 52 will have been a failure. As regards the requirements for allowing interim operation while an ITAAC hearing is being conducted, if the process for determining whether to allow interim operation, and the standards adopted by the NRC under which such operation will be permitted are such that in practice it becomes de facto impossible to obtain interim operating authority for a completed plant, I believe there will be a significant adverse impact on the purchase and construction of any new nuclear power plants in the United States.

Let me first introduce myself. I am a retired partner (currently Of Counsel) of the Pittsburgh, Pennsylvania-based law firm of Eckert Seamans Cherin & Mellott, LLC. My experience in the area of licensing and regulating nuclear power plants and other nuclear facilities began in the 1960s, and I spent most of my career on legal issues associated with commercial nuclear power. In that connection I was principle outside counsel to Westinghouse Electric Company and its predecessors from 1970 until my retirement from my firm in 1999, and I still perform consulting work for Westinghouse on nuclear regulatory matters.

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M.A. Spencer (max 8)

During the 1980s, I was Chairman of the Lawyers Committee of the Atomic Industrial Forum, Inc. and Co-chairman of a joint committee of the Forum, the Edison Electric Institute, and American Nuclear Energy Council formed in 1982 to work on reform of the nuclear regulatory process. In these roles, I was heavily involved in the activities which led to the adoption of Part 52 and also in the revisions to the NRC backfit regulations. I testified on behalf of the nuclear industry in favor of licensing reform before committees of both the United States Senate and the House of Representatives, and made presentations on behalf of the nuclear industry to the Commissioners of the NRC and to the NRC Staff. I also was involved in legal aspects of the Westinghouse submittals for design certification of the AP600 and the AP1000.

These comments are my personal comments and do not necessarily reflect the position of my clients.

Delays attributable to the nuclear licensing process in the startup of constructed nuclear power plants were numerous under Part 50. One example of such delay occurred with respect to the startup of the San Onofre Nuclear Generating Station Units 2 and 3. In a letter dated March 6, 1981 from Mr. William R. Gould, Chairman of the Board of Southern California Edison Company, to President Reagan with respect to those plants, Mr. Gould stated:

“In just the past year, initial operation of San Onofre has been rescheduled twice, with a total delay of eleven months ... Those delays are solely attributable to delays in the licensing process.”

Throughout the 1980s, leaders of the nuclear industry including the chief executive officers of a number of other utilities, made presentations to the NRC Commissioners and to committees of both branches of Congress in which they stated that the success of efforts to change the licensing process was a prerequisite to future nuclear plant orders in the United States.

Reports from the NRC to the Congress in the 1980s confirmed the fact that the NRC licensing process was causing substantial delays in the startup of nuclear power plants. In a statement to the House Appropriations Subcommittee on June 18, 1981, Dr. Joseph M. Hendrie, the Acting Chairman of the Nuclear Regulatory Commission, stated:

“... we now face a situation in which for the first time a significant number of plants will be complete and ready to operate before the completion of required adjudicatory hearings.”

Delay in the licensing process also was a contributing factor in the cancellation of certain nuclear power projects. For example, on February 2, 1982, Mr. Martin E. Fate, Jr., President of Public Service Company of Oklahoma, announced the cancellation of the Black fox Nuclear Power Station, Units 1 and 2. In a letter to Mr. Harold R. Denton, Director, Office of Nuclear Reactor Regulation, NRC, announcing the cancellation, Mr. Fate attributed delays and uncertainty as one of the main reasons for termination of the project.

In a letter dated July 20, 1983, to me as co-chair of the nuclear industry's joint committee on reform of the nuclear licensing process, Senator George J. Mitchell, a member of the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, U.S. Senate, requested information on specific instances where the NRC hearing process had delayed nuclear power plant operation. I responded on behalf of the nuclear industry in a letter to Senator Mitchell dated September 10, 1983, and provided information on numerous instances of the regulatory process causing delay in startup of nuclear power plants.

The bottom line - stated by a number of senior nuclear industry executives - was that without a change in the nuclear licensing process, no new nuclear plants would be ordered or built in the United States. The end result was the adoption by the Commission in 1989 of Part 52. Fundamental to the approach taken by the Commission in adopting Part 52 was the recognition of the need for single-stage licensing. Thus, Part 52 allows for a facility to be licensed for construction and operation in a single proceeding.

Recognition that a combined license was both appropriate and necessary came from many quarters. The President's Commission on the Accident at Three Mile Island (the "Kemeny Commission, in its report in October 1979, recommended that the Commission:

"be authorized to conduct a combined construction permit and operating license whenever plans can be made sufficiently complete at the construction permit stage" (Kemeny Commission Report, at p. 65)

The Rogovin Commission Report on Three Mile Island similarly stated:

"We have come to the conclusion that the two-step licensing process should be abolished for nuclear plants of conventional design. Instead, a single licensing proceeding should be held prior to construction in which design plans that are as detailed as possible should be considered and approved. Once a license is granted, jurisdiction to oversee construction and confirm that the plant is constructed consistently with the design plans should be placed in the NRC Staff." (Rogovin Report, at p. 141)

The Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals (the "Charnoff Committee"), appointed by the NRC, concurred that the Commission should be authorized to establish procedures for one-stage licensing - the issuance of a combined construction permit and operating license. (Charnoff Committee Report, August 16, 1982, at p. 9; December 15, 1982, at p.8)

This recognition of the need for single-stage licensing clearly was reflected in the adoption by the NRC of Part 52, with its provisions for a combined license (COL), and in the amendments to the Atomic Energy Act of 1954.

Central to the issue of a combined license is the identification of inspections, tests, analysis and acceptance criteria (ITAACs) in the COL. Specification of ITAACs before construction of a facility begins establishes clearly defined requirements governing the license and the Commission as respects facility construction and operation. This was made clear by the Commission on numerous occasions. For example, in a submittal of proposed legislation on this subject to the Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, U.S. House of Representatives, the Commission stated in its section-by-section analysis:

“The Commission will be in a better position to assure that the plant has in fact been constructed and can be expected to operate in accordance with the license authorization. At the same time, license specification of those requirements [ITAACs] would enhance regulatory certainty for the facility licensee by prescribing what will be expected of the licensee in the construction and early operational phases of the plant and the bases for performance.”

When construction was completed and the acceptance criteria were found by the NRC Staff to have been met, the contemplation under Part 52 was that a nuclear plant would be permitted to begin operation without hearing delays. The entire theory behind the COL is that a licensee is obtaining a single license to both construct and operate the plant, and that if construction conforms to the license, and in particular to the acceptance criteria, the licensee can proceed directly from construction to operation.

However, because there always remained a possibility that a request for a hearing would be made, the Commission adopted, and the Congress later ratified, a provision whereby a completed plant would be permitted to operate notwithstanding a challenge to such operation, if there was reasonable assurance of adequate protection for such interim operation during the period required for the hearing. Without this provision, there could be no assurance that a completed plant, determined by the NRC Staff to have met the acceptance criteria, would be able to begin operation in the face claim by those seeking to delay or prevent operation of the plant that the one or more acceptance criteria had not been met.

As stated by Senator J. Bennett Johnston, Chairman of the Committee on Energy and Natural Resources, U.S. Senate, on February 6, 1992, when the legislation was being considered to amend the Atomic Energy Act of 1954 to confirm authorization for such operation despite a claim that the acceptance criteria had not been met:

“... there has been no nuclear plant ordered since 1998, and unless the hearing system is appropriately straightened out, most experts concede that there will never be another nuclear plant ordered again. In order for Wall Street or for investors to invest in a plant, they need to know with some degree of certainty that the licensing process will permit a safely constructed plant to proceed into operation on time. Otherwise, they cannot take the risk that their \$3 billion, or

whatever the figure is for the construction of that plant, might lay fallow while the courts drone on and on with years of litigation.”

As counsel to Westinghouse, I have been involved in licensing proceedings of more than 35 nuclear power plants in the United States. Based on that experience, I can unequivocally state that intervenors opposing operation of the plants, and their counsel, were very creative in raising procedural issues that caused lengthy delays in licensing proceedings. I believe we can anticipate that such creativity will continue when and if hearings are conducted on whether the acceptance criteria of a COL have been met and thus, whether a completed plant will be permitted to operate. This makes the procedures and standards for allowing interim operation all the more important.

The procedures adopted by the NRC for permitting interim operation and the standards adopted by the NRC under which such operation will be permitted cannot be such that in practice it becomes virtually impossible to obtain interim operating authority when construction has been completed. Otherwise, the U.S. nuclear industry will be right back where it started – with fully completed plants unable to commence operation because of the regulatory morass created by the licensing process at the end of construction. Part 52 will have been a failure. If the ITAAC hearing procedures are allowed to recreate the failure of the Part 50 two-step process and result in delays in operation of fully constructed plants, I believe there will a significant adverse impact on the purchase and construction of any new nuclear power plants in the United States.

Please feel free to contact me at 412-418-2414 if you have any questions.

Very truly yours



Barton Z. Cowan, Esq.