

UNITED STATES NUCLEAR REGULATORY COMMISSION

TENNESSEE VALLEY AUTHORITY

DOCKET NO. 50-259, 50-260, AND 50-296

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO  
FACILITY OPERATING LICENSE AND OPPORTUNITY FOR HEARING

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos DRP-33, DRP-52 and DRP-68, issued to the Tennessee Valley Authority (the licensee), for operation of the Browns Ferry Nuclear Plant located in Limestone County, Alabama.

The proposed amendment would revise Technical Specifications (TS) Section 3.2/4.2 to reflect plant modifications for upgrading the Reactor and Refuel Zone Radiation Monitoring System. This system upgrade will include replacement of existing analog monitors with digital equipment from the General Electric Nuclear Measurement Analysis and Control line of products.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 25, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing



Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Athens Public Library, South Street, Athens, Alabama 35611. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.



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Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch,



or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Frederick J. Hebdon, petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this FEDERAL REGISTER notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

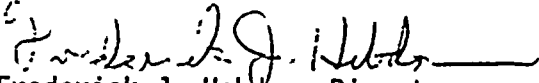
Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 23, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 19th day of October 1992.

FOR THE NUCLEAR REGULATORY COMMISSION

  
Frederick J. Hedden, Director  
Project Directorate II-4  
Division of Reactor Projects - I/II  
Office of Nuclear Reactor Regulation





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resulted in a failure to provide notice to the public that this substantive regulation was promulgated under the specific subsections for which the Act provides criminal penalties for willful violations.<sup>1</sup> These types of problems have affected the NRC's ability to refer cases to the Department of Justice and seek an appropriate criminal remedy.

The NRC has considered how to provide more effective and consistent notice of criminal penalties for willful violations of specific regulations. The NRC has also considered how to minimize imprecision that could jeopardize appropriate criminal enforcement action against those who <sup>willfully</sup> violate these regulatory requirements. As more fully explained in Part III of the Supplementary Information section, the final rule restructured the notice provisions to accomplish these ends.

## II. Analysis of Public Comments.

In response to the January 3, 1992, proposed rule, the NRC received comments from eleven organizations or individuals. Five of the comments were from members of the medical community, including hospitals and medical societies. Three sets of comments were received from utilities with nuclear facilities. One set was submitted by a nuclear industry organization. Two sets of comments were received from law firms that represent nuclear utilities. The commenters generally were critical of

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<sup>1</sup> The omission as to 10 CFR 50.7(a) was subsequently corrected. (March 21, 1990; 55 FR 10404).



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that criminal statutes are to be strictly construed and are not to be extended by inference or implication. As stated above, however, Section 223 is clear, and the NRC's approach <sup>is intended to provide</sup> ~~to~~ notice, ~~does not~~ <sup>to</sup> extend the reach of Section 223 <sup>by inference, implication or otherwise.</sup> ~~or~~ ~~the rule as~~ drafted ~~rely on inference or implication, but~~ clearly states in each 10 CFR Part that all regulations in the Part are subject to criminal penalty except those specifically enumerated as excepted. This language is straightforward, unambiguous, and constitutes clear notice in a narrative form, replacing the legalistic notice contained in the legal authority provisions. A person should reasonably be able to read this new rule and understand that, unless specifically excepted in the new rule, a willful violation of any NRC regulation in the 10 CFR Part may subject a person to criminal liability.

A few commenters pointed to Sections 206 and 210 of the Energy Reorganization Act as evidence that Congress did not intend criminal penalties to attach to violations of NRC regulations implementing those sections, e.g., 10 CFR 50.7. However, the legislative history shows only that the Congress determined that certain individuals violating the provisions of Section 206 itself should be subject to civil penalties, not that a violation, with the requisite criminal degree of willfulness, of regulations issued under the Act would be subject to civil penalties only. Moreover, there is no provision in Section 206 that explicitly authorizes the issuance of regulations. The specific authority for these regulations is found in Sections 161b and 161o of the Act. Because adequate authority to issue

