



NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 10, 1979

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MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne

FROM: *EB* Leonard Bickwit, Jr.
General Counsel

SUBJECT: POLICY STATEMENT ON COMMISSION PARTICIPATION
IN LICENSING ACTIONS

Attached is a draft policy statement on Commission participation in licensing actions. It follows closely the lines of the proposal made by the members of the Appeal Panel at the Commission's meeting on this subject held Thursday, October 4, 1979. The proposal would suspend the immediate effectiveness rule indefinitely. It would give an Appeal Board sixty days to review the Licensing Board decision and issue an opinion deciding whether that decision should become effective and isolating areas in which Commission policy guidance was needed. The Commission would then have twenty days in which to review the Appeal Board's decision and determine what further action to take. The draft contains two delineated alternative versions of how the Commission will review Appeal Board stay decisions and what the consequences of Commission inaction would be.

Attachment as stated

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UNITED STATES NUCLEAR REGULATORY COMMISSION
MODIFIED ADJUDICATORY PROCEDURES

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Suspension of 10 CFR 2.764 and Statement of Policy.

SUMMARY: As a result of the Three Mile Island accident, the Commission has decided to make interim modifications to the procedures by which it supervises and reviews adjudicatory licensing decisions involving power reactors. It has decided to suspend until further notice 10 CFR 2.764 which is its internal rule of practice on issuance of licenses after adjudicatory decisions. Furthermore, it has specified the procedures by which new licenses, permits and authorizations may be issued. As provided in the Interim Statement on Policy and Procedure, ___FR___ (adopted August 4, 1979), this action will not affect non-adjudicatory proceedings or other adjudicatory matters including enforcement and license amendment proceedings, appellate decisions and partial initial decisions not authorizing issuance of new licenses or permits.

SUPPLEMENTARY
INFORMATION:

The Commission's recent Interim Statement of Policy and Procedure, ___P.R. ___ (adopted October 4, 1979), indicated that the Commission would soon decide the procedures by which it would exercise increased

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supervision over adjudicatory licensing decisions in the aftermath of the investigations of the Three Mile Island accident. That Statement also indicated that new construction permits, limited work authorizations and operating licenses for power reactors would be issued "only after action of the Commission itself."

The Commission has now determined that, until further notice, adjudicatory proceedings concerned with such new licensing action will be conducted as described below. The Commission has adopted this approach because it achieves the objective of increased Commission supervision of licensing actions while (1) requiring the least disruption of existing procedures; (2) avoiding undue delay and duplication of effort by adjudicators and parties; and (3) allowing the Commission maximum flexibility in terms of deciding whether, in light of its other responsibilities, particular proceedings or issues warrant its early intercession or can appropriately be left to the ordinary adjudicatory processes (subject, of course, to ultimate Commission review at the conclusion of the proceeding).

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For the time being, the Commission is employing its rulemaking power to suspend its "immediate effectiveness" rule (10 CFR 2.764). 1/ That rule is an internal, non-substantive Commission rule of practice. For that reason, and because prior notice and comment would further delay adjudicatory decisions from being rendered and from being addressed by the Commission, and so would be contrary to the public interest, this suspension shall be effective upon issuance.

1. Atomic Safety and Licensing Boards.

Atomic Safety and Licensing Boards shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would otherwise authorize. The Boards' decisions shall not become effective until the Appeal Board and Commission actions outlined below have taken place.

In reaching their decisions the Boards should interpret existing regulations and regulatory policies with due consideration to the implications those regulations and policies of the Three Mile Island

^{1/} The Commission currently has underway a study of whether, apart from this temporary measure, the immediate effectiveness rule should be retained, modified, or abolished. Nothing in today's action is intended to prejudice the outcome of that study.

accident. Further it should be understood that as a result of analyses still under way the Commission's regulations and regulatory policies may be further changed and thus compliance with existing regulations may no longer be sufficient to provide reasonable assurance that the public health and safety will be adequately protected and to warrant approval of a license application. The Commission expects the Licensing Boards to pay particular attention in their decisions to analyzing the evidence on those safety and environmental issues which the Boards believe present serious, close questions and which the Boards believe may be crucial to whether a license should become effective before full appellate review is completed.

2. Atomic Safety and Licensing Appeal Boards.

Within sixty days of the filing of any Licensing Board decision that would otherwise authorize licensing action, the Appeal Board shall decide any stay motions that are timely filed. 2/ For purpose of this policy, a "stay" motion is one that seeks to defer the effectiveness of a Licensing

2/ Such motions shall be filed as provided by 10 CFR 2.780. No request need be filed with the Licensing Board prior to filing with the Appeal Board. CP. Public Service Company of New Hampshire, (Seabrook Station, Units 1 and 2), ALAB-338, NRC 10 (1976).

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Board decision beyond the period necessary for the Appeal Board and Commission action described herein. If no stay papers are filed, the Appeal Board shall, within the same time period (or earlier if possible), analyze the record and decision below on its own motion and decide whether a stay is warranted. It shall not, however, decide that a stay is warranted without giving the affected parties an opportunity to be heard.

In deciding these stay questions, the Appeal Board shall employ the procedures set out in 10 CFR 2.788. However, in addition to the factors set out in 10 CFR 2.788(e), the Board will give particular attention to whether issuance of the license or permit prior to full administrative review may: (1) create novel safety issues in light of the Three Mile Island accident; or (2) prejudice review of certain safety or environmental issues. In addition to deciding the stay issue, the Appeal Board will inform the Commission if it believes that the case raises issues on which prompt Commission policy guidance would advance the Board's

[Footnote 2 cont'd from previously page.]

The thirty-day period has been selected in recognition of two facts. First, allowing time for service by mail, close to thirty days may elapse before the Appeal Board has all the stay papers before it. Second, the Appeal Board may find it necessary to hold oral argument.

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appellate review. If the Appeal Board is unable to issue a decision within the sixty-day period, it should explain the cause of the delay to the Commission. The Commission shall thereupon either allow the Appeal Board the additional time necessary to complete its task or take other appropriate action, including taking the matter over itself. The running of the sixty-day period shall not operate to make the Licensing Board's decision effective. Unless otherwise ordered by the Commission, the Appeal Board will conduct its normal appellate review of the Licensing Board decision after it has issued its decision on any stay request.

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3. Commission.

Reserving to itself the right to step in at any earlier stage of the proceeding, including the period prior to issuance of the Licensing Board's initial decision, the Commission shall, promptly upon receipt of the Appeal Board decision on whether the effectiveness of a Licensing Board decision should be further delayed, review the matter on its own motion. The parties shall have no right to file pleadings with the Commission unless requested to do so.

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[It is expected that the Commission will issue a decision in each case within 20 days of receipt of the Appeal Board's decisions. If it does not act within that time, and if the Appeal Board has not stayed the Licensing Board's decision, then the license or permit shall be issued in accordance with the initial decision.] [It is expected that the Commission will issue a decision within 20 days of the Appeal Board's decision.]

In announcing the result of its review of any Appeal Board stay decision, the Commission may allow the proceeding to run its ordinary course or give whatever instructions as to the future handling of the proceeding it deems appropriate (for example, it may direct the Appeal Board to review the merits of particular issues in expedited fashion; furnish policy guidance with respect to particular issues; or decide to review the merits of particular issues itself, bypassing the Appeal Board).

The above set of interim procedures applies only to formal adjudicatory proceedings and so does not apply to uncontested operating license proceedings or to uncontested issues in contested operating license proceedings when such issues are not

reviewed by the Appeal Board on its own motion. However, as provided by the October 4 Interim Statement any such licenses will be issued "only after action of the Commission itself."

The actions described above constitute the Commission's final action on the petitions it has received in the Black Fox and Skagit proceedings.

For the Commission

SAMUEL J. CHELK
Secretary of the Commission

Dated:

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