

Natural Resources Defense Council, Inc.

917 15TH STREET, N.W.
WASHINGTON, D.C. 20005

202 737-5000

50-437

Western Office

2345 YALE STREET
PALO ALTO, CALIF. 94306
415 327-1080

December 29, 1978

New York Office

122 EAST 42ND STREET
NEW YORK, N.Y. 10017
212 949-0049

Dr. Joseph M. Hendrie, Chairman
John F. Ahearne, Commissioner
Victor Gilinsky, Commissioner
Peter A. Bradford, Commissioner
Richard T. Kennedy, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



Gentlemen:

Actions taken by the Staff with reference to floating nuclear power plants (FNPs) illustrate a serious problem inherent in present Commission practice. Now before the Commission in the review of ALAB-489 is the correctness of the Staff view respecting the core melt accident for FNPs. In theory, the presentation to the Commission on this issue should be limited to the formal papers filed in the proceeding and with respect to which all parties had an equal opportunity to express their views. In fact, as early as October 27, 1978, the Staff provided the Commission with its assessment of the need for and desirability of consideration of the core melt accident for FNPs.

On October 27, 1978, Harold Denton sent a memorandum to the Commissioners regarding the response to recommendations given in the GAO report entitled "Before Licensing Floating Nuclear Power Plants, Many Answers Are Needed" (SECY 78-561). Although care was taken to appear to avoid having the Commission endorse the positions taken in the response, in fact the stated purpose of the paper was "to obtain Commission approval of NRC comments to Congress regarding GAO recommendations." No party to the OPS proceeding was afforded an opportunity to address the Commission at that time on the issue raised by the GAO report. Thus SECY 78-561 was a classic ex parte communication.

It does not appear that the Commission has given sufficient attention to the practical operation of the ex parte rule. On the one hand, communications such as SECY 78-561 would appear to be a routine and valuable part of the Commission's duties. On the other hand, the integrity of the adjudicatory process would appear to be equally if not more important. This conflict between operation of the Commission business and preserving the

790119 0181

adjudicatory process occurs all the time. For instance, the Commissioners are severely hampered in their ability to learn what is occurring in regulatory Staff licensing activities because of limits on their right to observe hearings or read the dockets prior to the case reaching the Commission. As a result, problems of Staff practice reflected in cases like St. Lucie, Pilgrim II, Seabrook and Shearon Harris often do not get reviewed until long after the damage has been done and when corrective measures are inherently disruptive. In addition, proposed rules are frequently developed after an ex parte communication from the Staff to the Commission urging their adoption. E.g., recent amendments to 10 CFR Part 21.

To attempt to meet the legitimate needs of the Commission to be able to conduct its business and to protect the public access to and input on Commission decisions, I propose the following:


1. Public notice of proposed Staff presentations to the Commission be made at the earliest date when it is known a presentation will be made, even if the content is not known.
2. At least ten days be allowed from the date of the public availability of the Staff documents (including all underlying documents relied upon by the Staff) before Commission consideration to allow an opportunity for the public to file written comments.
3. In all cases where the subject of the Staff presentation may be relevant to a pending licensing proceeding, the parties to the proceeding be provided with an opportunity to make both written and oral presentations and the Commission consider as a threshold matter whether it should consider the Staff presentation at all.
4. The Commission establish an office within OGC to monitor Staff actions including conducting interviews and examining files in order to be able to advise the Commission of the development of a Staff position or policy which warrants prompt Commission consideration. A decision to undertake such consideration would trigger a notice to all interested parties of an opportunity to participate and access to all relevant documents.
5. Commissioners or any Commission-level personnel be allowed to attend any public meeting or hearing, whether related to a pending case or not, as an observer only. Prior notice of the intent of a Commissioner to attend such a meeting should be encouraged but not required.

CLERK

Commissioners
December 29, 1978
Page Three

What these reforms will do is protect the legitimate interests to which the ex parte rule is addressed, allow the Commission to have better access to material needed to do its job and increase public involvement in Commission decisions. Please consider this a request for modification of internal administrative practices and, where appropriate, as proposed amendments to Commission regulations.

Sincerely,


Anthony Z. Roisman

cc: all persons on OPS service list