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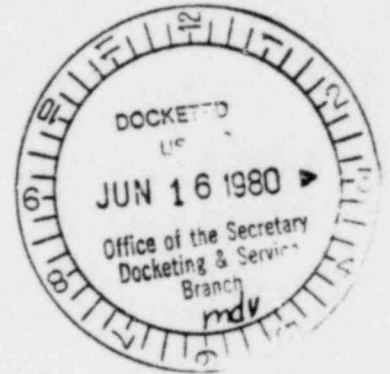
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DOCKET NUMBER
PETITION RULE PRM-2-10^①
(45 FR 26071)

June 16, 1980



Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dear Mr. Chilk:

By Federal Register Notice dated April 7, 1980 (45 Fed. Reg. 26071), the Nuclear Regulatory Commission requested public comments on a March 13 petition for rule making filed by the Citizens Advisory Board of the Metropolitan Area Planning Agency, an official advisory board in the Omaha, Nebraska-Council Bluffs, Iowa area. The petition proposes significant amendments to 10 C.F.R. Part 2.

The following comments respond to the petition, and are offered on behalf of Boston Edison Company, Combustion Engineering, Inc., Houston Lighting & Power Company, Northern Indiana Public Service Company, and Puget Sound & Light Company.

Petitioner proposes that 10 C.F.R. § 2.105 be amended "to require proposed licensing actions to be pre-noticed if a hearing is requested by five or more persons." We strenuously object to this proposal. If it were adopted, every licensing action, including even those which are solely administrative and of no safety significance, would have to be pre-noticed if five persons so request. However, Section 189 of the Atomic Energy Act, 42 U.S.C. 2239, permits the Commission to approve, without prior notice, a proposed licensing action which does not present a significant hazards consideration. The proposed rule would negate that statutory discretion. Petitioner has not demonstrated why the Commission should take such action.

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Since the proposed rule has no apparent rationale^{*/} and could require the Commission to hold many unnecessary hearings with attendant costs and potential delays, we believe it should not be adopted.

Petitioner also proposes that interested persons be permitted to request a "formal hearing" without being required to intervene as a party. We oppose this proposal. The Commission has, by virtue of its rule making authority under Section 161 of the Atomic Energy Act, devised two procedures for participation in NRC licensing proceedings: a person may petition to intervene as a party pursuant to 10 C.F.R. § 2.714 or may make a limited appearance pursuant to 10 C.F.R. § 2.175. A person making a limited appearance may make an oral or written statement on the record but is not a party and is not entitled to participate in the proceeding. Also, under Section 2.206, interested persons may request an appropriate NRC Division Director to institute a proceeding "to modify, suspend or revoke a license, or for such other action as may be proper." We believe that NRC's current procedures in Part 2 provide interested persons abundant opportunity to participate formally or informally in NRC proceedings. Petitioner offers no reason why the existing procedures are inadequate and we know of none.

Petitioner requests that an "informal public hearing" be held in each instance where no formal hearing has been requested. Public meetings can be useful for receiving public comment on issues involving nuclear power plants; such meetings can also permit correction of many public misconceptions. We therefore endorse the concept of holding public meetings but we do not believe such meetings should be converted into informal "hearings." The term "hearing" connotes an adversary atmosphere--witnesses, cross-examination, a record. If the Commission [or an appropriate Division Director] determines that a public meeting is warranted, because of the circumstances of the particular proceeding or issues brought to the attention of the Commission, such a meeting can be scheduled to discuss, not decide the issues.

Petitioner also suggests amendment of 10 C.F.R. § 2.715 to permit expanded participation by limited appearers in hearings. We believe this amendment is unnecessary since Section 2.715 was amended (43 Fed. Reg. 17798, May 26, 1978) to permit interested persons further

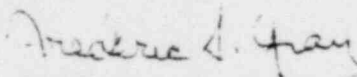
^{*/} Petitioner's proposal appears to be illogical in that no mechanism is specified by which the five persons would become aware of a proposed licensing action upon which to request a hearing before a notice had been published.

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opportunit, to express their views in the licensing process. The proposed notice requirements would clearly impose a substantial burden upon the Commission's staff; we believe the Secretary need only provide notice of hearings or conferences at which persons interested in expressing their views could participate. Also, the Secretary need not be required to serve on any requestor documents already in the Public Document Room; such a requirement would waste very limited manpower and funds.

Finally, Petitioner requests that 10 C.F.R. § 2.751 be amended to require that virtually all hearings, prehearing conferences, and meetings between the Commission staff and representatives of licensees and/or consultants be open to the public and held at a time and place such that the public can attend. NRC has already implemented many of Petitioner's recommendations (see "Open Meetings and Statement of NRC Staff Policy," 43 Fed. Reg. 28058, June 20, 1978). Notice is given of prehearing conferences, hearings and other special meetings by the NRC. Prehearing conferences and hearings are usually held in the vicinity of the proposed power plant; thus, potentially affected persons can attend. We believe, therefore, that amendment of Section 2.751 is unjustified and unnecessary. If Petitioner proposes that all hearings, meetings, etc., be scheduled for evenings in the site vicinity, we object -- again because the proposal would be a misuse of staff manpower and budget.

Sincerely,


Frederic S. Gray

FSG/gmh