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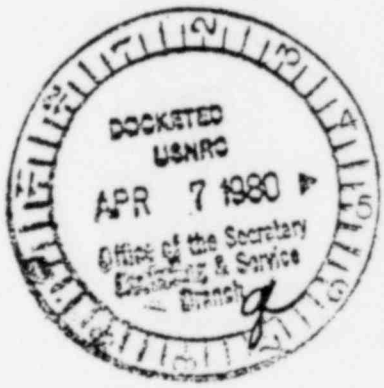
DOCKET NUMBER (1)
PETITION RULE PRM-50-25
-50-25a
(45FR 7653)

April 4, 1980



Samuel J. Chilk
Secretary of the Commission
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Petitions to Amend or Rescind 10 C.F.R. § 50.55(b), Docket Nos. PRM-50-25 & PRM-50

Dear Mr. Chilk:

On February 4, 1980, the Nuclear Regulatory Commission ("Commission") provided notice of two petitions for rulemaking which seek the amendment or recision of Section 50.55(b) of the Commission's regulations, 10 C.F.R. § 50.55(b). 44 Fed. Reg. 1653. Specifically, the petitions seek the promulgation of a new regulation establishing a broader standard for determining whether "good cause" for the extension of completion dates in construction permits has been demonstrated. Interested persons were invited to submit comments by April 4, 1980.

The following comments are submitted on behalf of Washington Public Power Supply System ("Supply System"), which is a holder of licenses to construct nuclear power reactors, and an applicant for a license to operate a power reactor. The Supply System opposes the proposed revision of 10 C.F.R. § 50.55(b) for the reasons stated below.

Section 185 of the Atomic Energy Act ("Act"), 42 U.S.C. § 2233, provides for the forfeiture of a construction permit unless the permit holder either constructs the authorized facility within the period specifiefed in the permit or receives an extension of time in which to do so for "good

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cause shown." In its present form, 10 C.F.R. § 50.55(b) implements this statutory provision. While the regulation provides for the recognition of factors such as "developmental problems attributable to the experimental nature of the facility . . . fire, flood, explosion, strike, sabotage, domestic violence, enemy action, [and] an act of the elements," it does not require the reappraisal of the many matters previously resolved in connection with the decision to issue a construction permit. Instead, only the questions raised directly by the application for an extension are at issue. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), ALAB-291, 2 NRC 404 (1975). In our view, this procedure properly implements the Commission's statutory mandate to provide an opportunity for the extension of nuclear facility construction deadlines and ensures the orderly processing of administrative applications.

Nevertheless, the petitioners request the promulgation of a regulation requiring each applicant for a construction date extension to show "'good cause for the continued construction'" of the plant in question. 44 Fed. Reg. at 7653. However, the petitioners apparently either are unaware of or ignore the fact that the issuance of a construction permit is necessarily preceeded by exhaustive NRC review. That review results in detailed, comprehensive findings of fact and conclusions of law regarding, inter alia, the safety of the facility, the applicant's technical and financial qualifications, and the need for the facility. See, e.g., 10 C.F.R. Part 2, Appendix A. VI; § 50.40. To revisit these matters in the context of an application for the extension of a construction permit would serve no useful purpose and would be inconsistent with the well-established doctrine that adminstrative proceedings must be concluded at some point through the adoption of a final agency decision. See McCulloch Interstate Gas Corp. v. FPC, 536 F.2d 910 (10th Cir. 1976).

Despite this, petitioners argue that applying 10 C.F.R. § 50.55(b) in a way which considers only the reasons behind the slippage of the construction completion date "would frustrate the statutory purpose that 'good cause' be shown for an extension." 44 Fed. Reg. at 7653. This argument lacks merit for two reasons. First, neither the wording of Section 185 nor the legislative history behind that provision supports petitioners' position. Second, Congress has demonstrated that when it intends to permit relitigation of issues, it provides the procedures and standards explicitly. For example, Section 186(a) of the Act, 42 U.S.C. § 2236(a), provides for the revocation of a

construction permit whenever conditions are revealed which would have warranted the denial of the original permit application. See 10 C.F.R. § 2.206; Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-315, 3 NRC 101 (1976). If Congress had intended to require the consideration of factors unrelated to construction date slippage in a Section 185 proceeding for the extension of a construction permit, it would not have created a parallel procedure for post-licensing consideration of identical factors elsewhere in the Act. See 42 U.S.C. § 2236(a). In short, the petitioners' proposal would frustrate rather than implement the congressional intent behind Section 185.

If circumstances are such that a licensed facility may no longer meet the requirements of the Act and the Commission's regulations, the procedures established under Section 186 provide the appropriate avenues for ventilating the matter. Parallel procedures under Section 185 would be inconsistent with the Act and would unnecessarily burden both the Commission and the regulated community, without providing additional public interest benefits. If these petitioners desire to effect the amendment of the Act to accomplish the result they seek, they should raise the matter with Congress. The NRC is constrained to enforce the Act as written, and, as written, the Act does not authorize what petitioners seek. The present regulation, 10 C.F.R. § 50.55(b), properly implements the Act, and should be retained.

Sincerely,

Nicholas S. Reynolds