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July 7, 1980

Secretary of the Commission
ATTN: Chief, Docketing and Service Section
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Sir/Madam:

Enclosed please find the Union of Concerned Scientists Comments on Possible Amendments to "Immediate Effectiveness" Rule.

Very truly yours,

Ellyn R. Weiss

ERW/dmw
Enclosures

L-4-1, Pt.2

Acknowledged by card. 7-9-80

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UNITED STATES OF AMERICA
BEFORE THE NUCLEAR REGULATORY COMMISSSION

Proposed Rule Making

UNION OF CONCERNED SCIENTISTS
COMMENTS ON POSSIBLE AMENDMENTS
TO "IMMEDIATE EFFECTIVENESS" RULE

By Federal Register notice dated May 22, 1980 (45 Fed. Reg. 34279), the NRC proposed four alternative modifications to those sections of 10 CFR Parts 20 and 50 comprising the so-called "immediate effectiveness rule." The Union of Concerned Scientists ("UCS") believes Option C, repeal of the rule, is the most appropriate action. The other options would improve the current system and are preferable in descending order: B, A, D.[1/] Retention of the present rule would be, in our view, wholly unacceptable.

There can be no serious doubt that the immediate effectiveness rule in its present form is grossly unfair both in actual effect and in appearance, undermines the basic integrity of the licensing process and is inconsistent with generally-accepted practice in the large majority of other federal agencies particularly those which provide for an automatic appeal as of right.

The Seabrook proceeding provides the starkest example of the injustice of the present rule. In that case, the Appeal Board

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1/ The unfortunate acronym is entirely unintentional.

denied intervenors initial requests for a stay of construction. By the time the Appeal Board was able to review the factual record, upon which basis it reversed the Licensing Board's decision on site-related issues, the plant was already substantially into construction and the site had been cleared and bulldozed. As the crowning injustice, the Commission later ruled that, in weighing Seabrook against alternatives, the money spent during construction pursuant to a legally incorrect and later reversed Licensing Board decision would be counted as an advantage of Seabrook and a detriment to all other alternatives. This ruling, which is presumably still good NRC precedent, gives the lie to the assertion that pre-appeal construction is at the "peril" of the applicant. The peril, of course, is to the public interest, and to the ability of the Appeal Board and the Commission to render an unbiased decision on the basis of the evidence on the record, all of which becomes hostage to the speed of construction.

A nuclear project is a long and complex one, subject to the processes of federal, state and local law, to the restraints of the financial community, and to the vagaries of suppliers, vendors and labor. Every objective study done on the length of time required to put a nuclear plant on line has shown that the NRC adjudicatory process is not a dominant factor in lengthening lead time. It is specious to maintain that an additional period of perhaps six months

to review the correctness of licensing decisions will have a substantial impact on the cost of a project. As compared to the present impact on construction schedules of labor and supply problems, of slowed demand growth and of a balking financial community, this additional time is trivial. One need only look at the history of plants currently under construction to confirm this fact.

Moreover, it costs far less to defer the beginning of construction for six months than to suspend construction at a later date for that same six months, after a substantial labor force has been hired. In our opinion, the utilities so strongly support immediate effectiveness not because it makes projects less costly but because they recognize as we do that the onset of construction hopelessly prejudices subsequent appeals and makes the project a fait accompli. This is not a legitimate regulatory purpose.

UCS believes that Option C, calling for repeal of the immediate effectiveness rule, is the best one. Since the Appeal Board is required by the regulations to review every case, it makes no sense to prejudice that appeal by allowing construction to begin while it is pending. In addition, this approach is clearly the least cumbersome, since it eliminates the need for briefing, argument and review of a separate and additional set of issues related to whether interim construction should be permitted. Freed of the need to rule on such stay-related issues, the Appeal Board should be able to expeditiously review the merits of appeals within six months.

Option B, mandating a final decision on LWA issues prior to construction, is less desirable than Option C, but still an improvement over present practice. Our basic objection is that it would add a substantial amount of work for all parties and the Board and would tend to fragment the process for a questionable gain to applicants. It would seem dubious at best, considering the additional time required to brief, argue and decide the LWA-related issues, that Option B would result in a significantly quicker decision on construction than Option C.

Option A, adding effectiveness as an additional issue for the Licensing Board is, again, an improvement over the current rule. However, it is even more cumbersome than Option B and will drain the resources of the parties and the Licensing and Appeal Boards. It is our firm view that this system would end by actually increasing over Option C the amount of time from the beginning of construction permit hearings to the date at which the decision is made on whether to begin construction. The minimum time required to build a record before the Licensing Board on the schedule for construction and to brief, argue and decide the issue of whether a "substantial question" on site-related issues has been presented, plus the time for Appeal Board review of the ASLB's findings on these questions, would be substantial. It would be quicker and certainly far more efficient to simply repeal the immediate effectiveness rule and move directly to the merits before the Appeal Board,

as provided by Option C.

Option D, calling for retention of the present system with loosened "stay" standards is a minimal improvement over present procedure. Any system which requires the Appeal Board to make the crucially important decision on whether construction may begin on the basis of only a preliminary and, by necessity, cursory review of the record is unsatisfactory. In addition the thirty days which this Option would allow for the intervenors to review the record and brief the stay issues and for the Appeal Board to review the pleading and record, and to decide the issues, is wholly inadequate.

Conclusion

UCS urges the Commission to adopt Option C, repealing the immediate effectiveness rule. This option is the fairest, least complex and most efficient of the resources of all involved.

The Union of Concerned Scientists

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