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July 7, 1980

Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Comments of the New England Coalition on Nuclear Pollution on Proposed Amendements to the "Immediate Effectiveness" Rule

Dear Mr. Chilk:

The New England Coalition on Nuclear Pollution (NECNP) submits the following comments on the NRC's proposed amendments to the "immediate effectiveness" rule (45 Fed. Reg. 34279).

The Commission proposes 4 options for amending the rule. Option C - total repeal - is clearly the best and NECNP strongly supports its implementation. The other options would to varying degrees mitigate the injustice of the current rule but are also more complex and burdensome than outright repeal, without offering any significant benefit in time-saving or efficiency over Option C. NECNP believes that Option B is the second-best alternative and that Options A and D, in descending order, offer some improvement over present practice. We agree with and endorse the attached comments of the Union of Concerned Scientists.

No other organization has been more directly and seriously affected by the "immediate effectiveness" rule than NECNP. As a party to the Seabrook proceeding, NECNP has consistently argued that the immediate effectiveness rule unfairly and unwisely allows the progress of construction to assure that the plant will become a fait accompli before serious site-related safety issues are resolved on appeal. With construction at Seabrook well under way, the fact that the fundamental issue of seismic hazards is just now before the Commission is just simply the latest example of the folly of the "immediate effectiveness" rule. If, as NECNP believes it should, the Commission now rejects the Seabrook site or requires substantial redesign of the reactors, the costs to all involved will have been enormous - and unjustified. At this point, it is likely that the necessary redesign would be prohibitively expensive, so the Commission

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faces the choice of effectively destroying the investment to date or of compromising the safety of the reactors in the name of expediency. This is a direct and completely predictable result of the operation of the "immediate effectivesness" rule.

As UCS suggests, simple repeal of the "immediate effectiveness" rule, so that construction will not be allowed to begin until after the Appeal Board rules on the merits, is the most efficient approach since it avoids extensive and delay-inducing arguments on whether the rule should apply in a particular case. More importantly, it is consistent with the Commission's requirement that all Licensing Board decisions be reviewed by the Appeal Board. Presumably, the underlying reason for that requirement is that nuclear safety is such an important and complex issue that each case should be reviewed by two panels, rather than one, even if the case is uncontested. However, the Appeal Board's ability to review the evidence impartially and to reverse the Licensing Board when the record so requires is severely hampered by the fact that construction is allowed to begin pending appeal and to overtake areas of concern. Adoption of Option C, repeal of the "immediate effectiveness" rule, would eliminate this existing inconsistency in the Commission's regulations and bring a long-overdue measure of basic fairness to the licensing process.

Sincerely,

Ellyn R. Weiss

William S. Jordan, III

Counsel for the New England
Coalition on Nuclear Pollution

ERW/WSJ/lc

Attachments

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,

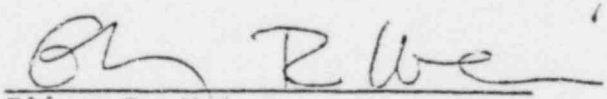
as provided by Option C.

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

By: 

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