



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 1, 1981



The Honorable James T. Broyhill
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Broyhill:

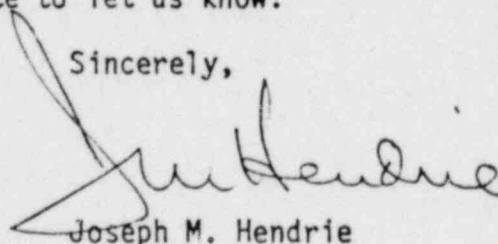
This is in response to your letter dated April 8, 1981 in which you express concern that the Commission has not responded to your request for legislative or administrative changes to reduce delays in licensing of new nuclear power plants. In fact, the Commission has begun the process of seeking such changes to expedite the licensing process.

The Commission on March 18, 1981 sent to the Congress proposed legislative amendments to the Atomic Energy Act of 1954 which would authorize the Commission to issue an interim operating license for a nuclear power plant. An interim license would authorize fuel loading and low-power operation and testing in advance of the completion of an on-the-record evidentiary hearing on contested issues. Under existing law and in the absence of the proposed Congressional amendment, a formal on-the-record evidentiary hearing must be held if requested by any person whose interest may be affected, and a decision rendered on the basis of that record before the Commission may issue an operating license. A copy of the proposed legislation is attached for your information. (Enclosure 1)

The Commission has also initiated various administrative changes to expedite the licensing process. We have sent to the Federal Register a proposed rule to modify the immediate effectiveness rule. (See Enclosure 2) A second notice of proposed rulemaking has been sent to the Federal Register for comment on several proposed amendments to NRC Rules of Practice which are intended to minimize the time lag between NRC adjudicatory decisions and plant completion. (See Enclosure 3) In addition, the Commission is actively studying its present "contentions rule" which governs the introduction of issues by intervenors in licensing proceedings.

You can be assured that the Commission is actively attempting to expedite the licensing of new nuclear power plants as much as is possible consistent with the Commission's duty to protect the public health and safety. If we can be of any further assistance, please do not hesitate to let us know.

Sincerely,



Joseph M. Hendrie

Enclosures:

1. Proposed legislation
2. Proposed rule (immediate effectiveness)
3. Proposed rulemaking (Rules of Practice)

8105150226

DRAFT BILL

To amend the Atomic Energy Act of 1954, as amended to authorize the Commission, upon determination that such action is necessary in the public interest, to issue an interim operating license authorizing fuel loading, low-power operation and testing of a nuclear power reactor in advance of the conduct of a hearing:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, that subsection 189a of the Atomic Energy Act of 1954, as amended, is amended by adding after the final sentence in the subsection:

Notwithstanding any other provisions of this Act, the Commission may, upon determination that such action is necessary in the public interest in order to avoid the consequences of unnecessary delay in the operation of a nuclear power reactor, issue for such a facility an interim operating license authorizing fuel loading, and operation and testing at power levels not to exceed five percent of rated full thermal power, in advance of the conduct or completion of any required hearing: Provided, that any operating license so issued shall be subject to any

subsequent findings and orders of the Commission after the conduct of any required hearing; and provided further, that in all other respects the requirements of the Atomic Energy Act of 1954, as amended, shall be met. Prior to the issuance of any such interim license, the Commission shall publish in the Federal Register a notice of its intent to issue the license, and shall provide an opportunity for parties to the proceeding to comment on whether such action is necessary in the public interest. The authority to issue such an interim license for a nuclear power reactor in advance of the conduct or completion of a hearing shall expire on December 31, 1983.

Analysis of Proposed Legislation

Under the Atomic Energy Act of 1954, as amended, no person may operate a nuclear power plant without first obtaining an operating license from the Commission. Under existing law, a formal on-the-record public hearing must be held before issuance of any operating license if requested by any person whose interest may be affected. The proposed amendment to subsection 189a authorizes the Commission, under the circumstances specified therein, to issue an interim operating license authorizing fuel loading and operation and testing at power levels not to exceed five percent of rated full thermal power, in advance of the conduct or completion of hearings on the issuance of the full-term license.

This authority could be used only if all legal requirements applicable to a license for fuel loading and low-power testing and operation have been satisfied, with the sole exception of the requirement that in a contested proceeding, operation can be authorized only after a decision based upon the record of a completed hearing. These legal requirements include the Commission's findings as to public health and safety, the common defense and security, the environment, and antitrust considerations, as mandated by the Atomic Energy Act of 1954, as amended, the National Environmental Policy Act, and other applicable statutes.

Under the proposed legislation, the Commission may exercise the authority to permit fuel loading and low-power operation and testing if it finds that such action is necessary in the public interest in order to avoid the consequences of unnecessary delay in the operation of the facility. This public interest finding would be based on the consideration of the costs, ultimately borne by consumers, of having a completed nuclear power plant standing idle while awaiting the completion of the hearing on the full-term license. These costs include the dollar costs of delay and of obtaining replacement power, and may also include the need for power from the facility and the energy equivalency of fossil fuel.

Any interim license issued under this authority will be subject to any subsequent findings and orders of the Commission after the conduct of the required hearing.

The proposed legislation requires the Commission, before authorizing issuance of a license for fuel loading and low-power operation and testing, to publish notice of its intended action in the Federal Register and to afford an opportunity for parties to comment on whether the intended action is necessary in the public interest.

Any final action of the Commission under this subsection is subject to judicial review.

The authority granted by the proposed legislation will expire on December 31, 1983. For a significant number of nuclear power plants -- those most affected in the review process by Commission efforts to respond to the Three Mile Island accident -- this time period should permit the Commission, with the full cooperation of prospective applicants, to schedule licensing reviews and proceedings so as to avoid, wherever possible, situations in which completed plants stand idle while awaiting completion of licensing proceedings.

Comparative Text Draft Bill
Atomic Energy Act of 1954, As Amended

Sec. 189. Hearings And Judicial Review.--

a. In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186 c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104 b. for a construction permit for a facility, and on any application under section 104c. for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such

thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. Notwithstanding any other provisions of this Act, the Commission may, upon determination that such action is necessary in the public interest in order to avoid the consequences of unnecessary delay in the operation of a nuclear power reactor, issue for such a facility an interim operating license authorizing fuel loading, and operation and testing at power levels not to exceed five percent of rated full thermal power, in advance of the conduct or completion of any required hearing: Provided, that any operating license so issued shall be subject to any subsequent findings and orders of the Commission after the conduct of any required hearing; and provided further, that in all other respects the requirements of the Atomic Energy Act of 1954, as amended, shall be met. Prior to the issuance of any such interim license, the Commission shall publish in the Federal Register a notice of its intent to issue the license, and shall provide an opportunity for parties to the proceeding to comment on whether such action is necessary in the public interest. The authority to issue such an interim license for a nuclear power reactor in advance of the conduct or completion of a hearing shall expire on December 31, 1983.

Additional Comments of Commissioner Ahearne

I accept the desirability of low-power interim licensing, given the problems we now face. If improvements in the licensing process cannot be made, then full-power interim licensing may be necessary. However, it is time for fundamental reforms in the role and practice of the hearing process. In particular, the Commission should direct Boards to serve to decide only issues that are raised by the parties, and of those, only those of substance. The threshold for admitted contentions should be significantly raised, sua sponte authority should be limited, and the Boards should be authorized to manage the proceedings with a strong hand. Failing these changes, I expect another Commission will be requesting full-power interim licensing legislation.

Additional Comments of Chairman Hendrie

I strongly support the legislative proposal made here for authority to issue interim operating licenses for fuel loading and low-power operation and testing. It would, in effect, advance the operating schedules of the affected units by several months and result in substantial savings for consumers.

But it is also my view that the authority for interim licensing could reasonably be extended to include full-power operation, with a further substantial reduction in cost impacts. This authority would be needed with regard to only a small number of units, I estimate nine at most and more probably no more than six, that are particularly severely affected by the licensing delays following the Three Mile Island accident. For these units, even the low-power interim license authority, together with all the measures the Commission can take under existing law, will probably not be enough to avoid licensing decision delays. Indeed, one of these units is already experiencing such a delay. The full-power interim licensing authority would remedy that situation for most of these units and would minimize the delay for the unit already affected.