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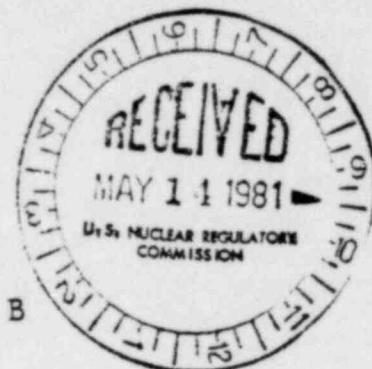
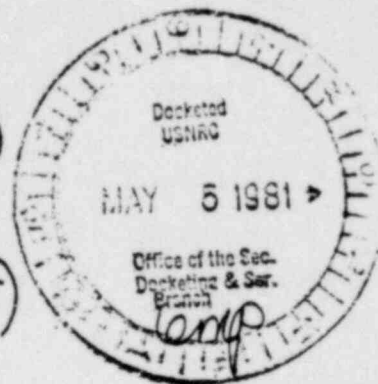
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PROPOSED RULE PR-2

Carl Walske
President

May 1, 1981

(38)
(46 FR 20215)



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

Re: Proposed modification of the "immediate effectiveness rule," 10 C.F.R. Part 2, Appendix B

Dear Mr. Chilk:

The Atomic Industrial Forum appreciates the opportunity to comment again on the path the NRC ought to follow with respect to the effectiveness of operating licenses following ASLB review. In preparing these comments, our Lawyers Committee and Reactor Licensing and Safety Committee have been consulted.

We believe that the preferred course for the NRC now would be a simple rescission of Appendix B to Part 2, rather than either of the alternate proposals set out in 46 F.R. 20215 (April 3, 1981). As the Commission's notice indicates, the substantive regulatory situation disturbed by TMI has settled. It is now apparent that the modifications of Appendix B, a procedural emergency measure which may have seemed to some to be prudent in 1979, are no longer justified today and should be eliminated.

By the time an operating license decision first issues the application has undergone extensive safety review and approval by the NRC regulatory staff and ACRS, as well as hearing review, and approval by an Atomic Safety and Licensing Board. It is entirely reasonable for this very thorough, and time and resource consuming, process to be accorded an administrative presumption of correctness. Moreover, NRC's regular stay provisions, which would still exist if Appendix B were eliminated, provide for fully adequate and judicially time tested means for the agency, either on its own initiative or at the initiative of a party to the application proceeding, to determine that a particular license should not become immediately effective. It is anticipated, as with past experience, that the exceptional conditions to warrant such a result would occur very infrequently.

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We believe that prior to promulgation of Appendix B, NRC's rules served a valuable balancing function of operating in most instances to expedite reactor operation, while providing a satisfactory mechanism for public protection in unusual instances where reasonable expedition appeared to be outweighed by competing considerations. This situation should be returned to today. It is obvious that continuation of the Commission's Appendix B experiment is too costly, and without compensating benefits.

In conclusion, we strongly urge the Commission to withdraw Appendix B promptly, and to allow operating license decisions to become immediately effective. Option A, which would continue to require substantial costly delays for no apparent benefit, cannot be justified. Option B, which would nevertheless be preferable if the Commission is not prepared to rescind Appendix B entirely, would continue unduly to routinely expend valuable Commission resources in an area which experience has shown does not warrant such an overly cautious approach.

Thank you for the opportunity to present these views.

Sincerely,

Carl Walke

CW:cp