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

CHAIRMAN

May 13, 1981

The Honorable James T. Broyhill
Committee on Energy and Commerce
United States House of Representatives
Washington, D. C. 20515

Dear Congressman Broyhill:

I have your letter of May 12th with the attached amendments which you, Mr. Moorhead, and Mr. Corcoran intend to propose for the Nuclear Regulatory Commission authorizations for FY 1982 and 1983. You have asked for my opinion on these amendments. I understand that your committee schedule makes a prompt reply imperative and in view of the limited time I have prepared this personal response. My colleagues may wish to comment separately.

The first amendment would authorize the NRC to issue interim operating licenses:

> "SEC. 5. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary to issue temporary operating licenses for nuclear power reactors as provided in section 192 of the Atomic Energy Act of 1954, except that such temporary operating licenses may be issued--
>
> (1) in advance of the conduct or completion of any hearing required by section 192 or by section 189 of such Act, and
>
> (2) without regard to subsection (d) of such section 192 and the findings required by subsection (b)(3) of that section."

You asked for my opinion on the effectiveness of this amendment in speeding the licensing of nuclear plants that are now or soon will be completed and for which licensing decisions will be delayed while required hearings are being conducted.

I believe that this amendment, once enacted and effective, would rapidly clear the current logjam in bringing plants into operation when ready. It would limit the delays for now-completed plants and would allow plants that would be completed after the effective date to go into operation without delays. The savings to electricity consumers in the affected service areas would be substantial.

Since the amendment would be effective for FY 1982 and FY 1983, the authority to issue temporary operating licenses would end on September 30, 1983. I expect measures we are taking now to expedite staff reviews and the hearing process to be effective in preventing delays for plants completed after that date. The time span for this temporary operating license authority thus appears to me to be adequate. I note, however, that the amendment would not be effective until October 1, 1981 or the date of enactment, whichever is later. From the standpoint of limiting delays for already completed plants, the earliest possible effective date is clearly desirable.

I would like to comment on one other feature of the amendment. Section 192 of the Atomic Energy Act requires a special hearing, under rules to be formulated by the Commission, on any petition for a temporary operating license. The amendment allows the Commission to issue a temporary operating license before the conduct or completion of that special hearing but, as written, leaves the requirement for the special hearing to be held. The Commission would then find itself conducting two hearings simultaneously on each case where a temporary operating license was issued. One would be the regular Section 189 hearing and the other would be the special Section 192 hearing. The additional staff resources and licensing board resources devoted to the special hearing would be a substantial burden, detracting from our ability to prosecute other pending cases and having, in my view, little worth. If subsection (1) of the amendment were changed to read

> "(1) in advance of the conduct or completion of any hearing required by Section 189 of such Act, and without the need to hold any hearing that would otherwise be required under Section 192 of such Act, and"

that burden could be avoided. I recommend the change for your consideration.

The second amendment is intended to overrule the Sholly court case:

"SEC. 5. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary to issue and make immediately effective amendments to operating licenses for nuclear power reactors where the Commission determines that the amendment involves no significant hazards consideration. Such an amendment may be issued and made effective immediately--

(1) in advance of the conduct and completion of any required hearing, and

(2) without providing the prior notice and publication in the Federal Register referred to in section 189 of the Atomic Energy Act of 1954.

In all other respects the amendment shall meet the requirements of the Atomic Energy Act of 1954."

You asked for my opinion of the effectiveness of this amendment in overruling the Sholly case holdings.

I believe that this amendment would be effective, while it was operative, in overruling the objectionable portions of the Sholly case holdings and thus in preventing the disruption in our regulation of operating plants that I am convinced would follow from those holdings. The amendment would simply confirm the Commission's interpretation of Section 189 of the Atomic Energy Act and our long-standing practice under that interpretation. Since the amendment would be in effect only during FY 1982 and FY 1983, it would not be effective in dealing with possible near-term problems caused by the Sholly decision and would need to be repeated in future authorizations or converted into a permanent amendment to the Atomic Energy Act.

I would like to comment on one feature of the amendment and to offer for your consideration a proposed change. As written, subsection (2) of the amendment could be interpreted to imply that prior notice and publication in the Federal Register were (without the proposed amendment) required for a change in an operating license even if it involved no significant hazards consideration. Section 189a of the Atomic Energy Act says quite clearly that "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." The Sholly court decision did not reach the question of whether some notice of intent to amend an operating license

is required for due process or other reasons, but Footnote 20 of the decision comments on the issue. The intent of the amendment, as I understand it, would be clearer and any possible ambiguity removed if subsection (2) read

> "(2) without providing any prior notice or publication in the Federal Register."

Again, this change would simply confirm the long-standing practice of the Commission with regard to operating license amendments involving no significant hazards consideration.

I very much appreciate the opportunity to comment on these amendments. Please let me know if I can provide further information on these matters.

Sincerely,

Joseph M. Hendrie