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PROPOSED RULE PR-2
46 FR 17216
April 7, 1981



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



Re: NRC (10 CFR Part 2) RULES
OF PRACTICE FOR DOMESTIC
LICENSING PROCEEDINGS: Expediting
the NRC Hearing Process (46 FR 17216)

Dear Mr. Chilk:

Scientists and Engineers for Secure Energy (SE₂) is pleased to respond to the Nuclear Regulatory Commission's request for comments on the possible amendments to its Rules of Practice as published in (46 FR 17216). We must note, however, that our comments cannot be formulated in isolation from the broader duties and responsibilities of the Commission.

In the light of the current, exceedingly critical situation caused in part by the NRC's negligence, (as discussed below) any proposed speed up is better than the current procrastination. The stated position of SE₂ is that the current licensing schedules are inordinately long. Consequently, any NRC proposal which would shorten and tighten the various licensing steps is most welcome and certainly supported by our organization.

Nevertheless, even under the proposed, abbreviated schedules, when the combined time for preliminary licensing, the issuance of environmental impact statements and construction and operating permits equals a substantial part of the construction time, one wonders whether the proverbial (regulatory) tail is not, indeed, wagging the (power plant) dog.

While it is not SE₂'s role to develop and prepare a substitute hearing schedule, we feel an obligation to propose some guiding thoughts which could facilitate the re-establishment of a purposeful and effective regulatory, licensing framework.

- (1) One should distinguish between the front- and back-end hearings of the plant construction process. The "Permit to Construct" document clearly needs a special set-aside period during which the licensing body reviews the design and evaluates its engineering and safety-

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related qualifications. The "Permit to Load and Operate" is yet another matter. Here, during the construction process, there is ample opportunity for partial review, inspection, and assessment. A final hearing should, in a streamlined fashion, only bring together into a coherent and comprehensive whole the already established partial assessments.

- (2) In the proposed, revised hearing schedule, there are elements which go against the customary ways of developed industrial societies. Unorthodox procedures should be afforded careful scrutiny and given a most expeditious interpretation. For example, gross misuse is made of the the discovery process when it becomes extended beyond all reasonable bounds in order to enable lay interveners to "get technical information needed to prepare for the hearing."¹ Following this logic, hearings have often been transformed into a kind of course for opponents of nuclear power in which to hear how best to block any resolution of observed or perceived problems. This kind of regulatory filibustering can be easily avoided by a requirement that those involved possess the required, professional competency to discuss the matters at hand without having to go through a hearing process. In the same vain, SE2 is very supportive of the NRC proposal which would eliminate the opportunity for formal discovery against the NRC staff -- a practice which in the past often degenerated into "fishing expeditions." In the case of a permit to operate, it is absolutely inconceivable to require a period of more than three months (95 days) before the hearing even gets underway. Materials relevant to the hearings can be assembled during the plant construction process and should be available for consideration as soon as the plant is ready for loading.

Also, like in court proceedings, we suggest that the hearings be narrowly limited to matters pertinent to the case as determined by the hearing officers, and only persons competent in matters under scrutiny should be permitted to testify. Indeed, only relevant testimony should be accepted into the record. With such an emphasis on technical matters and competent participants, SE2 is convinced that the current, proposed period of almost five months, from the beginning of the hearings to the "Decision of the Licensing Board," could be reduced and cut in half. This combined with good preparatory work during the construction process, and appropriate streamlining of the construction permit process, could reduce the total time needed for the establishment of all required permits to something on the order of six months, or one-tenth of the time needed in some countries (e.g., Japan, France, Taiwan) to build a nuclear power plant from the start to its inclusion into the electric grid.

¹ see: "NRC Proposes Speedup in Licensing", Newsday (March 13, 1981)

- (3) In the light of the discussion in section two (2), above, there exists serious doubts² as to the appropriateness of the adjudicatory approach to many spheres of the licensing hearing processes. Such protocols are currently subjecting essentially technical questions to a singlemindedly juridical treatment. In our opinion, pruning such unwarranted adjudicatory intrusions into basically technical areas from the licensing process would result in a major reduction in regulatory time and a comensurate speed up of the NRC's performance.

* * *

Over the last year-and-a-half, following the publication of the many Three Mile Island inquiry reports, the failure of the Nuclear Regulatory Commission to forge ahead and speed up the licensing process for those nuclear power plants, nation wide, now awaiting interum or final licensing decisions has been a major, ongoing concern of SE₂.

With this in mind, since 1979, this organization has been actively attempting to bring the message stating the need to accelerate nuclear power plant licensing to all levels of the National government:

- (1) In November of 1979, SE₂ wrote a telegram to President Jimmy Carter. Signed by six, prominent SE₂ members (Drs. Hans Bethe, Thomas Pigford, Frederick Seitz, Edward Teller, Alvin Weinberg, and Eugene Wigner), the telegram noted that the consequences of "a severe oil crisis.... could be alleviated by putting into operation the six nuclear plants which are completed and ready for use." The six members went on to add: "We urge you to do all in your power to have these plants operating as soon as possible."
- (2) In December of 1979, President Carter declared: "We must resume the licensing process promptly so that new [nuclear] plants...can be built and operated." SE₂'s Chairman, Dr. Frederick Seitz, and Executive Secretary, Professor Miro Todorovich, included these comments in a January 17, 1980 letter to NRC's then-Chairman, John F. Ahearne. In the letter, SE₂ reiterated its suggestion that "the Nuclear Regulatory Commission proceed without delay with the licensing of those plants which have been already built and are ready for fueling." SE₂ pointed out that nuclear power plants are designed and constructed with the most stringent of safety and environmental considerations in mind and that they have achieved an operating, safety record unparalleled by any other technological undertaking of similar scale. The letter was concluded with the assertion that "...the Nuclear Regulatory Commission should act with conviction on the basis of its understanding

² see: Joel Velling, "High Technology and the Courts: Nuclear Power and the Need for Reform", Harvard Law Review 94, no.3 (January 1981): 489

of scientific fact, and proceed to discharge with alacrity its legally mandated duty -- the licensing of power plants within an established, regulatory framework."

- (3) On March 17, 1981, Chairman Ahearne replied to Dr. Seitz and Professor Todorovich. He wrote: "The Commission agrees with you that there are pressing reasons why licensing of newly completed nuclear power plants should not be unnecessarily delayed." The Chairman went on to state: "The NRC is preparing an Action Plan to provide a sound basis for an end to the Commission's licensing pause in the relatively near future."

It seemed clear to us, and to other technically competent organizations, that the United States must urgently enhance its domestic, power-producing capabilities. In order to insure for a viable economic, and social, national future, SE₂ has always believed that, in the best national interest, the thoughtful exercise of the nuclear power option be deliberately and efficaciously undertaken. According to its statutes, therefore, we consider it the NRC's obligation to institute and implement its licensing procedures so that the fullest complement of contemplated and completed nuclear power plants be brought into service with the least amount of hesitation or delay.

Nevertheless, a year has elapsed since Chairman Ahearne's communication with SE₂, and in that time, the Commission appears to have done very little to speed up licensing procedures. In fact, the NRC's Third Monthly Status Report (covering the period December 15, 1980-January 15, 1981) implies, to the contrary, that more time has been added to the licensing schedule. This continued lag has prompted SE₂ to write Congressman Tom Bevill and members of the Subcommittee on Energy and Water Development criticizing the Commission for its apparent disregard of its statutory obligations to initiate a rapid and thoughtful speed up of nuclear power plant licensing.

SE₂'s basic concern was clearly shared by the Secretary of the Department of Energy, James B. Edwards, who, in a letter dated February 13, 1981, wrote to Congressman Bevill stating: "The timely licensing and commercial operation of nuclear...power plants are a primary goal of this administration."

Frankly, SE₂ must express its surprise and deep regret that, thus far, despite repeated urgings by two, National Administrations and numerous Senators and Congressmen, and the testimony of many technically competent individuals, the Commission has for so long elected to ignore any such entreaties and suggestions. In addition, the NRC has failed to become more active and vigorous in commencing a speed up of its licensing procedures. During a time when it is imperative that a safe, environmentally acceptable, and economically feasible source of power, such as that supplied by nuclear generating stations, be brought onto the electrical power grid, one must ever so reluctantly pose the question: "Why has the NRC been so lethargic in moving ahead with the licensing of nuclear power plants?"

By inspecting the schedule of the NRC's regulatory activities, one discovers that the agency seems willing to accept for consideration even the most esoteric requests and petitions from groups or individuals while failing to discharge with any reasonable degree of efficiency its primary, statutory licensing obligations. The NRC seems to lack an order in its priorities. It was willing to engage in costly and

time-consuming speculative hearings thus inflicting upon this country's utilities near catastrophic financial, and other associated, burdens with the ultimate result that the immense monetary and economic loss involved had to be carried by the American public.

We hope that this published set of proposed rules for expediting the NRC's Hearing Process signals a new beginning in the Commission's reappraisal of its past practices. We also hope that such reappraisals will lead to further progress towards an overall simplification of the NRC's work.

Respectfully Submitted,

Miro M. Todorovich
Executive Director, SE2

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