



THE LEAGUE OF WOMEN VOTERS
OF SUFFOLK COUNTY, NEW YORK
Box 1103
Southold, N.Y. 11971
March 30, 1981

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

46 FR 17216

Attn.: Picketing and Service Branch

re: 10 CFR, Part 2, Rules of Practice
for Domestic Licensing Proceedings
March 13, 1981

Dear Mr. Chilk:

The League of Women Voters of Suffolk County, N.Y., participated as full intervenors in the Jamesport case, STN 50-516 and 517, from its inception through the appeal process and maintains a continuing concern for the manner in which the licensing process is conducted as a direct result of the Jamesport hearings. For information in addition to this letter, we refer you to a statement made by Dorothy K. Powers for the League of Women Voters of the United States on February 4, 1981 before the NRC on "The Future of Nuclear Regulation," a statement made at the request of the NRC.

The proposed amendments to 10 CFR, Part 2, dated March 13, 1981, are the subject of this letter. The stated aim in amending the NRC Rules of Practice is to speed up the proceedings on construction and operating licenses for nuclear power plants "without changes to the hearing process" (p.2) but with the objective of commencing hearings "as soon as possible consistent with fairness," after staff review of the issues. (p.3)

These amendments are also intended to "minimize the time lag between NRC adjudicatory decisions and plant completion." (p.2) We note, however, that the New York Times, March 20, 1981, reported that the NRC is asking permission "to let it issue interim licenses for nuclear power plants to be started at low power before public hearings have been concluded." (Emphasis added) This appears to be a significant change in the hearing process and could wipe out any possible value of public participation in the final stages of the hearing process.

The following comments relate directly to numbers 1 through 6 of the March 13 request for comment from interested parties.

1 - p.4: Changes proposed in the Rules of Practice would eliminate formal discovery against NRC Staff...

Comment: We find this an unacceptable change in the hearing process, inconsistent with the fairness doctrine, and a denial of the intervenors' right to due process under the law. Staff would respond "whenever practicable." (p.4) If Staff is still under the extreme pressure which this request for comment

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indicates, it is more than likely that Staff would all too often find it impracticable to comply with informal requests for information. Discoverable information that would become available as a result of cross-examination of Staff witnesses would not allow reasonable time for intervenors to prepare for the hearing. Informal discovery procedures should be encouraged, and formal discovery permitted.

#2 - p.5: Oral response to motions addressed to the Board...

Comment: We would have no strong objection to oral responses to motions addressed to the Board, provided that such responses are impartial and are not "off the cuff" decisions or damaging to the rights of any party. Such responses might save a very small amount of time.

#3 - p.5: Denial of motions to reconsider prehearing orders from the Board...

Comment: The proposal to disallow the filing of motions to reconsider prehearing orders is an unacceptable invasion of the right of parties to question such orders. Such orders could have an adverse effect on the drawing up of contentions - a difficult process, at best.

#4 - p.5: Delegation of authority to the Licensing Board Chairman to act alone on prehearing matters...

Comment: On the surface this appears to be a logical amendment, but such decisions would vary depending on the impartiality and experience of the Chairman. This appears to be an unnecessary change and would reduce the authority of other members of that Board.

#5 - p.5: Reply by the applicant to filing of proposed findings of fact...

Comment: Under no circumstances should the applicant be allowed to file a reply to other parties' findings of fact and conclusions of law, in our opinion, based on the Jamesport case at both the state and federal level. This is a waste of time, paper and the ratepayers' money and carries the litigative nature of the NRC hearing process to an absurd level. Applicant's replies to findings of fact in the Jamesport case were a rehash of its own filings, and a subversive and totally unnecessary attack on the other parties' findings. An impartial Licensing Board should be able to make its own decisions based on the record without a propagandistic reply to findings from Applicant.

#6 - p.6: Summary disposition...

Comment: This recommended change in the Rules of Practice is logical. The former rule which required a summary disposition to be filed 45 days prior to the hearing should be discarded.

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The LWV of Suffolk County recommends the adoption of item # 5 - denial of the right of applicant to file a reply to intervenors' findings of fact. We also recommend adoption of item # 6 - the flexibility of allowing motions for summary disposition at any time, subject to reasonable time limits.

The following proposed amendments are unacceptable: # 1, which would eliminate formal discovery against the NRC Staff and # 3, which would not allow motions to reconsider prehearing orders.

It is our opinion that amendments to 10 CFR merely to "save time" are inappropriate. The entire hearing process should be reexamined. The present adversarial aspects of the formal hearing process are not conducive to fair, unbiased decision making and lead to extreme polarization - an "if you are not for me, then you are agin' me" attitude.

We believe that many aspects of the licensing process would lend themselves to arbitration rather than to litigation, thus reducing the extraordinary amount of in-fighting among the lawyers participating in the process. Staff and applicant find it necessary to defend themselves, putting intervenors in an unnecessary position of attack. Mediation via frank and open-minded discussion among experts in given areas, at a very early stage of the decision-making process, might prove to be far less expensive and time consuming than the present system. Participation of the public in these early stages would be required.

Sincerely,

Jean H. Fiedke

Jean H. Fiedke
Energy Chairman
L.W.V. of Suffolk County, N.Y.

cc. Fran Romer, President
L.W.V. of Suffolk County
Dorothy K. Powers
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