



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555
January 2, 1981

POOR ORIGINAL

MEMORANDUM FOR: Chairman Ahearne
Commissioner Gilinsky
Commissioner Hendrie
Commissioner Bradford

FROM: *LB* Leonard Bickwit, Jr.
General Counsel

SUBJECT: WHAT NRC MIGHT DO IN A NATIONAL ENERGY EMERGENCY

This memorandum responds to Commissioner Gilinsky's December 5, 1980 memorandum which requested OGC to assess what legislation would be necessary on this subject. To date, we have heard mentioned the following possible NRC actions: (1) licensing temporary operation of plants prior to completion of public hearings; (2) tailoring NRC requirements and activities so as to facilitate increased availability among operating plants (e.g. outage rescheduling, temporary removal of operating restrictions).

Licensing Temporary Operation Prior to Completion of Hearings

There is no current statutory authority for such action; thus, legislation is needed. Draft legislation providing authority for interim operating licenses and amendments has been considered by the Commission several times in the recent past (see attachments). The most recent version of the legislation (see Memo to Chairman Hendrie *et al.*, from Len Bickwit, dated March 14, 1979 on "Draft Siting and Licensing Legislation") (Attachment A) would do the following:

- o permit issuance of an interim license or amendment "in advance of the conduct or completion of any required hearing"
- o require the Commission itself to determine that the license or amendment was necessary because of some level of public need, emergency or interest. (The relevant language of the various proposals, which differ on the level of public need that the Commission must find in order to act, is set out in the footnote below) 1/

1/ In the case of interim licenses, all proposals required operation to be "necessary because of an urgent public need or emergency." However, in the case of interim amendments, the March 14, 1979 proposal tendered the alternatives of "necessary in the public interest" or "necessary owing to a demonstrable public need for the power from the facility." During consideration of licensing reform legislation in late 1977, the Commission recommended the first alternative to OMB.

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- o in the case of an interim license, require the Commission to convene a hearing upon request the format of which would be determined by the Commission in light of the factual matters in dispute
- o in the case of an interim amendment, require the Commission to request and consider public comments. (No hearing would be required)
- o condition interim licenses and amendments on the requirements determined by the outcome of proceedings on the permanent license or amendment, and limit their duration to one (1) year unless extended by the Commission

Except as earlier noted, the March 1979 proposal did not differ on the above points from the proposed legislation on licensing reform approved by the Commission in the Fall of 1977 (Attachment 2).

The Commission considered in March 1979, but did not resolve, whether to include a mechanism, in the case of each interim license or amendment, for DOE or a State to certify the existence of the required level of public emergency, need or interest. DOE or State certification would have been weighed by the Commission in its licensing determinations. These provisions on DOE/State certification had no counterpart in the Commission's recommendations on licensing reform in Fall 1977.

Tailoring NRC Requirements and Activities to Facilitate Increased Availability Among Operating Plants

With respect to other NRC actions which affect plant availability, the determinative matter is the extent to which NRC has authority to consider and weigh the costs and risks associated with a national energy emergency in its regulatory decisions. Where NRC decisions do not significantly affect the overall safety of a plant, there is no question but that NRC may consider non-safety matters. This would include instances in which the margin of safety of a plant is maintained through compensating requirements and measures. Moreover, we believe that direct economic and related "need for power" impacts can generally be given weight in NRC licensing decisions even where the margin of safety is affected. Thus, mere declaration of some national energy emergency would not trigger any new NRC consideration in the licensing process, and legislation would not be needed to consider the implications of such an emergency for NRC licensing actions.

cc: OPE
 SECY
 OCA
 EDO
 ELD



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March 14, 1979

MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne

FROM: *EB* Leonard Bickwat, Jr., General Counsel

SUBJECT: DRAFT SITING AND LICENSING LEGISLATION

Attached is our latest draft of a possible Commission-sponsored siting and licensing proposal. While some of it will require additional redrafting, we believe it is in such form as to provide a reasonable basis for Commission discussion. ELD has reviewed most of the sections. Time has not permitted us to have the benefit of their review on some.

Attachment: . Draft Bill

cc: OPE
SECY

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DUPLICATE DOCUMENT

Entire document previously
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