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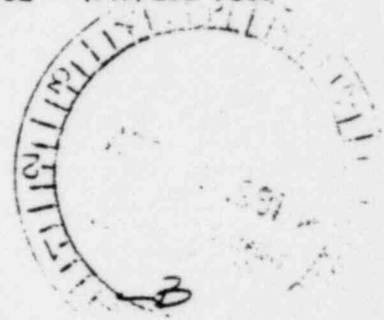

April 4, 1981

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DOCKET NUMBER PR-2
PROPOSED RULE
46 FR 17216

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

Att: Docketing and Service Branch

Enclosed please find comments in connection with the proposed amendments for Rules of Practice for domestic licensing proceedings, 10 CFR Part 2.

These comments are submitted in behalf of Three Mile Island Alert, 315 Peffer Street, Harrisburg, Pa. 17102.

Louise Bradford

Louise Bradford
TMIA Legal Representative

Enc.

cc: House Committee on Interior and Insular Affairs
Hon. Allen Ertel
Hon. William Goodling
Hon. John Heinz
Hon. Arlen Specter
Hon. Dick Thornburgh

1-4-1, Pt. 2

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Response of Three Mile Island Alert, Inc., to NRC Proposed Rules to Expedite the Licensing Process

As intervenors in the continuing hearings before the Atomic Safety and Licensing Board (AS&LB) concerning the restart of Three Mile Island Unit I, we feel we are in a particularly important position to give relevant comments on these proposed rule changes. Quite frankly, we are appalled at the substance of these rule changes. We are dismayed by the apparent total lack of comprehension of the impact these changes would have on the effective participation of citizen intervenors in licensing hearings. And we are shocked that the NRC dares to succumb to pressure from the utility companies to expedite the hearing process. This country has recently experienced a truly awesome and dangerous nuclear accident--the worst in its history. It seems obvious that the only appropriate response of the NRC should be to make the licensing hearing process more probative of the basic health and safety problems associated with the TMI and other accidents. These rule changes would accomplish the opposite result.

Our experience as citizen intervenors clearly shows that the existing rules are already entirely inadequate to protect the right of the public to be heard in connection with any licensing application. We are typical in having no legal or technical expertise. We have been denied any financial, technical, or legal assistance by the NRC, making a full and thorough review of all pertinent issues concerning the operation of a nuclear reactor impossible.

The least change, making us a little less accessible to information, and our task a little more difficult, would be so extremely burdensome, that we could not participate at all.

While removal of citizen intervenors may be your underlying goal, we caution you that the NRC and the AS&LB are creatures of Congress, and are bound by Congressional mandates. Not only did Congress specifically provide for a hearing process, but it <u>mandated</u> that the NRC appoint such officers and employees as may be necessary to carry out the functions of the Commission. 42 U.S.C. 2201. The NRC's only function, through AS&LB hearings, is to assure the public's health and safety - and that is all. See 1962 U.S. Code Congressional and Administrative News p. 2207. The functions do <u>not</u> include accomodation of utility companies, which is the stated purpose of these proposed changes. (P. 2 of the March 13, 1981, document soliciting comments.) If the NRC is having personnel problems, we would certainly support constructive proposals to improve the organization and management of the NRC, but such proposals must do so in a manner conducive to the efficient execution of the laws passed by Congress. These proposals do not.

1) <u>Proposals to Expedite Discovery</u>

Both the proposed guidelines to restrict discovery to 25 days, and the elimination of discovery against the NRC would have severe implications for citizen intervenors.

Discovery can be the most important process in these hearings, as in any legal proceeding. For citizen intervenors, discovery is the only viable method for extracting essential information from the applicant or the NRC.

By protecting the NRC staff from discovery, citizen intervenors would have no way of learning the factual basis for the NRC staff conclusions in support of licensing. If the staff decides to take the stand, intervenors would have to develop all "discoverable material", ie, the basis for NRC conclusions, through cross-examination. Similarly, in the likely event that intervenors could not obtain all relevant discovery from the applicant or licensee within 25 days, as the guidelines propose, intervenors would have to develop their entire case "as they went along", through cross-examination.

This is in total violation of all notions of due process. It has been difficult enough for us to cross-examine witnesses at the Unit I hearings, and we have had the advantage of a complete discovery process. Our cross-examination has consistently been directed at panels of witnesses represented by teams of attorneys. We have no attorneys. Therefore, our cross-examination has been consistently shot-down - not because we do not have valid points, but because we lack familiarity with the complex legal procedural rules required to respond to legal objections of the staff or licesee.

What points we can make on cross-examination, however, evolve directly from information we were able to obtain through discovery. Were we to lose the benefit of full discovery, we would hardly know what questions to ask.

In addition, please note that we, as other citizen intervenors, are not able to afford our own witnesses to develop direct testimony at the hearing. Our entire case must be developed through cross-examination of hostile, licensee & NRC witnesses. Therefore, discovery has been our only means of obtaining objective evidence. Should it be limited or eliminated, we would clearly not be able to effectively participate in the hearing process in any meaningful way.

Also, our lack of technical background makes the discovery process all the more essential. While we may have a theory about a particular issue, and a general idea of what we need to prove it, we need more time than technical experts to realize what exact documents we need, what questions need to be asked, and what individuals need to be questioned. The entire process is an educational one, and the one thing we need more than anything else is time. Be assured we are not asking for an unreasonable amount of time. But the proposed scheduling guidelines are blantantly biased against intervenors at every level, and would be literally impossible for us to comply with. We object strenuously to them, and for the reasons stated above, we object strenuously to the elimination of NRC discovery.

2) <u>Oral Rulings on Motions</u>

This proposal would have a severe impact on citizen intervenors. Consider, for example, the Unit I restart hearings. These hearings have been continuing since October, 1980. It is, of course, impossible for each intervenor to attend the hearings each day. Unlike applicants or licensees, intervenors have no full time staff. Some come from hundreds of miles away. Most are usually only able to attend those meetings dealing with their substantive contentions. However, the AS&LB typically will issue all types of procedural rulings at <u>any time</u>, whether or not an intervenor, whose contention may be affected, is in attendance. This is bad enough. But if the Board should be permitted to rule orally on actual written motions, it could be disasterous.

The problem is that our only knowledge of oral rulings stems from reading the transcripts. However, our organization, like many other citizen intervenors, can not afford the tremendous cost of transcripts. Our only source is the State Library, which not only is closed evenings and weekends, but receives transcripts 3-4 weeks behind schedule. Therefore, should an oral ruling effect our contention in any substantive way, we would obviously be severely prejudiced due to the 3-4 week time lag. We would also have lost our appeal rights by that time. This could be devastating to our efforts. Unless the NRC is willing to provide all parties with daily transcripts of the AS&LB hearing, we would strenuously object to a rule change permitting the Board to rule orally on motions.

3) <u>Permitting the Chairman to Act Alone on Substantive Prehearing Matters</u>, <u>and Cutting off Motions to Reconsider</u>.

First, we are at a loss to understand how such a rule change would expedite the hearing process. If the supposed "slowdown" is caused by the fact that the three Board members are spread out geographically during the prehearing stage, it seems that there are no questions which a simple telephone conference call among the three members can not resolve.

We think it extremely important that all three members be in direct communication on all matters during the prehearing stage. Entrusting important prehearing decisions to one person would seriously threaten the independence and integrity of the Board. But entrusting matters of <u>substance</u> to the one member of the Board whose only qualification need be in the "conduct of administrative proceedings", 42 U.S.C. 2241, lacking any technical expertise, would be a serious mistake. It has been our observation that the Board Chairman at the Unit I restart hearings has been "learning as he went along" on matters of substance which arise at the hearings authorizing him to substitute his judgement for that of the Board at the prehearing stage on substantive matters, could result in seriously uneducated, if not mistaken, rulings.

In addition, the NRC has also proposed a rule change to cut off all motions to reconsider at this stage.

Should the Chairman make a ruling which is clearly uneducated or mistaken, parties would have no recourse. This could result in serious due process problems.

The proposal to cut off motions to reconsider at the prehearing stage would also have a greatly dispraportionate impact on citizen intervenors. From our own experience, we would have no, or very little, informational background at this stage. Just as the Chairman does, we "learn as we go along". At this stage, we would likely be incapable of arguing a point at the exact time an issue arose. We would not realize the effects of prehearing motions and orders until rulings had been made. By cutting off our rights to present motions to reconsider, the NRC would be denying citizen intervenors meaningful participation at the prehearing stage. We strenuously object to both these rule changes.

4) <u>Motions to Dispose of the Entire Case at Any Time</u>.

It is quite apparent that this rule change would grant the applicant or licensee a tremendous tactic to wear down citizen intervenors, particularly since these motions may be made at any time on any matter. If both sides had equal legal and technical back-up systems, such a rule change might be fair. But in real, practical terms, the applicant or licensee, represented by house counsel or a law firm, could easily whip up such motions with supporting affidavits and memorandums of law.

The burden would then be shifted to the intervenor to answer, with their own supporting affidavits and memorandums of law. Not only would this be extremely burdensome on a citizen intervenorors time and resources, but it would force the intervenor to respond to a complex legal issue, i.e., the existence of a genuine issue of material fact. Without legal help, this would be impossible to do. We strongly object to this rule change.

In conclusion, the NRC should be aiming to enhance public confidence, health and safety through its own regulations--use them. Do not aim at forcing intervenors out of the hearing process - we can barely hold our own as is. With all deference, these rule changes are nothing more than, to quote Justice Douglas in his dissent in Power Reactor Devel Co. v. International U. etc. 81 S.Ct. 1529 (1954), "a lighthearted approach to the most awesome, the most deadly, the most dangerous process that man has ever conceived".

We implore you not to impose these rule changes!