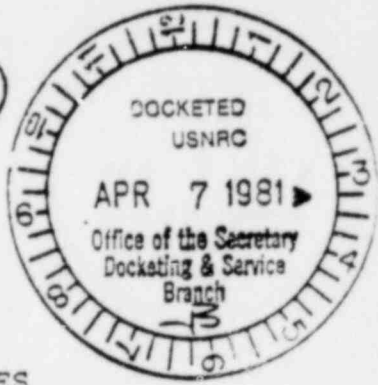


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UNITED STATES OF AMERICA

BEFORE THE NUCLEAR REGULATORY COMMISSION

46 FR 17216

COMMENTS OF PUBLIC CITIZEN ON PROPOSED RULES FOR EXPEDITING LICENSING PROCEDURES

Pursuant to the notice published at 46 F.R. 17216 (March 19, 1981), Public Citizen submits these comments on NRC's proposed amendments to its rules of practice governing proceedings on applications to construct or operate nuclear power plants. Public Citizen is a non-profit, public interest organization supported by annual contributions from approximately 40,000 persons. Public Citizen attorneys currently represent various citizen groups in licensing proceedings.

Citing potential delays in licensing completed plants, the NRC has announced that its proposed rules are designed to "expedite" the licensing process. While the NRC states that its proposal was aimed at achieving possible time savings without altering the hearing process (46 F.R. 17216), the major substantive change proposed would fundamentally alter the conduct of licensing proceedings by insulating the NRC staff from pre-hearing discovery. Aside from the dubious legality of a rule that would abrogate the discovery rights of only certain parties to an administrative hearing, the proposed amendments cannot be justified as a time-saving device.

Even if we assume that the licensing process is a significant cause of operating delays,<sup>1/</sup> the result of protecting the staff

<sup>1/</sup> It is misleading to present the problem of delay only on the basis of statistics concerning the number of months from the docketing of an application [footnote continued on page 2]

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from discovery will only serve to exacerbate the problem. Without the ability to engage in pre-hearing discovery, parties will not be in a position to prepare effective cross-examination for the hearing itself, thus extending the proceedings with unnecessary questioning. Further delays will obviously be necessitated by the production at the hearing of highly technical information which opposing parties will not have had an opportunity to analyze or prepare to rebut in advance. The hearing would thus necessarily be more confused and less efficient. At the same time, the proposal would not shorten the pre-hearing adjudicatory process, since all other parties are required to engage in pretrial discovery precisely to promote the interests in a fuller, more efficient hearing.

Since the proposal would therefore not "expedite" the licensing process in any way, one cannot ignore the fact that it seems better designed to reduce the amount of public inquiry into crucial safety issues. Without the ability to propound interrogatories or depose the NRC staff before the hearing, the other parties are simply not in a position to know what information exists and therefore what questions to ask. While both the Kemeny and Rogovin reports recommended more public scrutiny of NRC actions, the proposed rules would make it far more difficult

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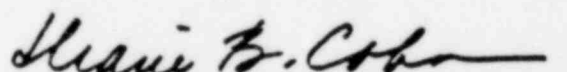
[footnote continued from page 1]  
until the receipt of a license. The fact is that much of this "delay" is attributed to problems of construction or to overly optimistic projections by the utility involved. For example, a 1978 study compiled by the Environmental Policy Institute on the basis of utility responses to an FPC questionnaire demonstrates that regulatory problems were a comparatively minor cause of delay in power plant licensing (copy attached). To the extent that the accident at Three Mile Island necessitated further regulatory review and resulting delay, the notice of proposed rulemaking recognized the special need for diverting staff resources to ensure the safety of operating plants and the development of new generic safety requirements.

for highly technical safety problems to be analyzed and addressed by intervenors in the licensing process.

We believe that there are a variety of means available to genuinely improve the efficiency of the NRC's adjudicatory process. In this regard, we endorse the proposals contained in the comments submitted by the Union of Concerned Scientists, which call for: 1) the automatic filing by the applicant of all data and documentation relating to the application at the time the application is filed; 2) the issuance of the Safety Evaluation Report and Environmental Impact Statement at the time of issuance of a notice of opportunity for hearing; and 3) early identification of witnesses and NRC sponsored deposition of witnesses.

Such changes would not only expedite the adjudicatory process, but create a fuller record for evaluating licensing applications. In contrast, the proposed elimination of discovery of the NRC staff can only have the opposite effect.

Respectfully submitted,



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