



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

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256

46 FR 17216

April 3, 1981

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing and Service Branch

RE: Proposed Amendments to the "Rules of Practice for Domestic Licensing Proceedings" of the U.S. Nuclear Regulatory Commission

Dear Mr. Chilk:

On March 13, 1981, you forwarded to the State of Minnesota a copy of a notice concerning proposed amendments to the rules of practice of the U.S. Nuclear Regulatory Commission (NRC) concerning domestic licensing proceedings. In addition to describing the proposed rule amendments, the notice describes a proposed hearing schedule for licensing proceedings which is intended to serve as a guideline for NRC's Administrative Judges. The notice states that the objective of the proposed amendments and the proposed schedule is to expedite and shorten the NRC hearing process, consistent with basic fairness. The notice provides that all interested persons may submit comments in connection with the proposed amendments and the proposed schedule until April 7, 1981.

The State of Minnesota by its Attorney General and its Minnesota Pollution Control Agency hereby submits its comments on the proposed rule amendments and the proposed schedule.

COMMENTS ON THE PROPOSED AMENDMENTS

The notice states that the proposed amendments to the Rules of Practice are necessary to remedy existing undesirable situations which now exist due to NRC organizational responses to the Three Mile Island accident. The notice states that due to staff reassignments, some licensing proceedings before Licensing Boards have been prolonged in such a manner that some nuclear reactors will be constructed prior to issuance of the needed licenses. The notice does not name the reactors involved nor indicate how many proceedings are in such a state of delay.

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The rules of practice which NRC proposes to amend apply to all domestic licensing proceedings and not just to reactor licensing proceedings presently underway. These rules will apply to all future licensing proceedings, including the licensing of waste disposal facilities for both high-level and low-level radioactive waste. In Minnesota's opinion, the appropriate NRC response to a problem involving a few specific present reactor licensing proceedings is not the revision of rules applicable to all current and future licensing proceedings. There is no apparent reason why these specific situations cannot be addressed by fashioning NRC orders appropriate to the individual reactor licensing proceedings now in progress. Therefore, Minnesota objects generally to the NRC's approach to solving its immediate problem.

In addition to its general objection, Minnesota also objects to specific provisions of the proposed amendments. Minnesota particularly objects to the proposal to bar all formal discovery with respect to the NRC staff. There is no evidence cited that the current ability of parties to seek formal discovery against the NRC staff is the single factor which has prolonged licensing proceedings beyond reasonable limits; yet the NRC seeks to eliminate such discovery on the pretext that this will expedite hearings. It is clear that if radioactive waste disposal facilities are proposed in the future to be sited in Minnesota, the State will be actively involved in the licensing proceedings and will wish to have the right to formal discovery against the NRC staff. The present rules allowing discovery against the NRC staff do not by their nature inevitably result in unnecessary delay. If in an individual case any party should abuse its right to discovery against the NRC staff, the staff can seek from the presiding officer protective orders which will adequately curb abuses. The generic removal of all discovery against the staff is totally inappropriate and not justified by the reasons cited in the notice.

Minnesota is also puzzled as to the reason for giving the Chairman of the Licensing Board the authority to make decisions on all prehearing matters. The elimination of the need to consult one other member of the Board before issuing an order seems unlikely to result in a significant expedition of the hearing process.

COMMENTS ON THE PROPOSED SCHEDULE

The proposed schedule, set forth at pages 3 and 4 of the

notice, embodies an objective that licensing hearings should be completed in eight months, beginning on the date of the publication of the Final Supplemental Safety Evaluation Report and ending with the issuance of the Licensing Board decision. The Notice specifically recognizes: "In the more complicated cases, which involve a large number of parties and contentions, additional time may be required." The notice further notes that a simple case may take less time.

Minnesota has reviewed this schedule but has difficulty commenting on the specified time lines contained therein because there is no context in which to judge them. There certainly may be cases before the Licensing Boards which may fit comfortably within this schedule, where minimal discovery is sought, where there are a limited number of contentions and witnesses, and where no unforeseen circumstances create delays. But Minnesota asks what practical effect this proposed "schedule" is intended to have upon Licensing Boards and parties. Is it intended to be binding? Does "violation" of the schedule result in concrete impacts upon the parties? In light of the unknown nature of the practical effects of the proposed schedule, Minnesota urges that no schedule be "promulgated" by the NRC.

CONCLUSION

Minnesota objects generally to NRC's proposal to amend its rules of practice in response to a problem involving a few specific licensing proceedings presently underway. If the rules are amended, Minnesota urges the NRC not to adopt those portions of the amendments which would eliminate the parties' right to seek formal discovery against the NRC staff. Minnesota urges the NRC not to adopt as an enforceable procedural requirement the proposed schedule set forth on pages 3 and 4 of the notice.

Respectfully submitted

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