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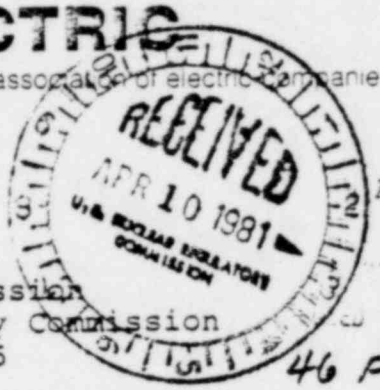

April 7, 1981

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

PR-2
46 FR 17216

Attention: Docketing and Service Branch

Dear Sirs:

This letter is filed in response to the notice of proposed rulemaking entitled, "Expediting the NRC Hearing Process" published for comment by the Nuclear Regulatory Commission in the Federal Register, March 18, 1981 (46FR17216).

The Edison Electric Institute is the association of investor-owned electric utilities and its members provide about 78 percent of the nation's electricity, serving over 67 million customers. All investor-owned electric utilities which operate, are constructing, or plan to construct nuclear power plants are members of the Edison Electric Institute.

Responses filed by individual utilities will doubtless comment on specific procedural changes proposed in the notice and the appropriateness of the hearing schedule contained in the notice. For that reason, the Institute's comments are confined to considerations of a more general nature.

At the outset we wish to emphasize the considerable magnitude of the commitment our country has made to the nuclear power plants which have construction permits and are in varying stages of construction and to the approximately eleven planned plants in the "Near-Term Construction Permit" applicants (NTCP) group. These plants represent financial commitments by the respective utilities, the magnitude of which depends on how far engineering and construction have progressed in each specific case. In the aggregate, however, they represent costs in the tens of billions of dollars, and very likely still greater sums will be necessary for their completion. Licensing delays at either the construction permit or the operating license stage which unnecessarily delay the completion of construction or the commencement of operation are likely to cost the nation's consumers of electricity billions of dollars in unnecessary higher rates. Moreover, since each 1000MWe nuclear power plant can replace 30,000 barrels of oil per day, operational delays caused by licensing delays can seriously aggravate our national dependence on imported oil.

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The removal of licensing from the critical path to nuclear power plant construction and operation is not only in the public interest but should be readily achievable by good management and relatively straight forward administrative steps. Moreover, there is no reason to doubt that this can be accomplished without prejudice to the rights of intervenors or the effectiveness of the NRC's programs.

None of the applications presently pending before the NRC for construction permits or operating licenses involves any dramatic issue of technical novelty. All of the plants embody fairly conventional nuclear steam supply systems and balance-of-plant designs of types which have previously been reviewed and approved by NRC and which are basically similar to plants already operating.*/ Moreover, the Commission appears to have formalized --or to be in the process of formalizing--its "lessons learned" and other post-TMI requirements in new requirements for both construction permit and operating license applicants.

It is against this background--of public interest in removing licensing from the critical path and the general absence of any fundamental novelty in plant designs (i.e., of nuclear safety questions)--that we make the following additional suggestions:

(1) The burdens on NRC Staff and licensing boards and the overall time spent in hearings can be reduced by instructing Atomic Safety and Licensing Boards that no contention by an intervenor should be allowed unless the intervenor makes an affirmative showing (in the nature of an offer of proof) of the evidence he will offer to support the contention, and unless the contention relates to a significant safety or environmental concern. In other words, a substantial evidentiary threshold showing should be required before a contention is accepted. Intervenors should not be permitted to rely merely on cross-examination to establish their contentions unless they make a substantial showing (in the nature of a plan of cross-examination) that the cross-examination is likely to be productive.

(2) The Commission should change its present policy by limiting board review to matters put in contention by the parties.

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*/ Even the NTCP applications are for permits to construct plants substantially similar to plants presently under construction.

Rather than being directed, like judicial tribunals, to resolve matters in dispute among parties, the hearing boards appear to be becoming another layer of technical review. This is enhanced particularly by the Commission's sua sponte rule which permits boards to raise matters not put in contention by the parties, and the Commission's December 18, 1980 policy change which requires the hearing boards to adjudicate the sufficiency of NRC post-TMI requirements for operating licenses.

(3) We recognize the desirability, as part of the Commission's recovery plan, of alleviating the burdens imposed upon the NRC Staff. For this purpose, we suggest abolition of the present practice which makes it incumbent upon NRC Staff to prepare written testimony on all controverted, and some uncontroverted, issues. The final environmental statement prepared in each proceeding by the NRC Staff with respect to environmental considerations, and the safety evaluation reports prepared by the Staff with respect to nuclear safety considerations, should suffice as NRC testimony-in-chief. Of course, the board should have the discretion in appropriate specific situations to request the Staff to prepare written testimony on specific matters where the board believes such testimony will provide significant assistance to it in the board's consideration of the issues; there is no need, however, for this to become a general practice.

(4) Safety or environmental concerns raised by intervenors which are generic in nature and not unique to the specific plant under consideration should not be admitted in the specific proceeding, but should be referred by the presiding board to the Commission for appropriate generic consideration and disposition.

(5) We believe it would be desirable for the Commission to designate a review committee, consisting of such members as a Commissioner, the Executive Director for Operations, and the Chairman of the Atomic Safety and Licensing Appeal Panel to fulfill an oversight function with respect to ASLB scheduling of proceedings over which they preside and the general conduct of such proceedings in order to assure that boards act with appropriate expedition and without prejudice to the rights of parties. The review committee would also be in a position to identify and correct situations where board members have multiple assignments which interfere with their prompt conduct of hearings.

We believe that the Commission's prompt adoption of measures along the lines discussed above, and others which our member companies will suggest, will go far towards eliminating unnecessary delay in the hearing process. The proposed rule change is

a minor step to improving the hearing process and the licensing proceedings. Other actions could be taken to immediately relieve the licensing delay problems with the near-term plants--reinstatement of the Immediate Effectiveness Rule (10 CFR 2.764), NRC Staff reallocation, and issuance of interim operating licenses in advance of completing the ASLB hearings. Implementing the rules proposed at 46FR17216 should not be used as a substitute for other actions to resolve the licensing delay issues. We are confident also that a number of measures can be adopted, and that licensing can be taken off the critical path, without prejudice to the rights of intervenors and without adverse impact on the effectiveness of the NRC's regulatory and licensing program.

We appreciate the opportunity to submit these comments.

Sincerely,

John J. Kearney

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