JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

383

PROPOSED RULE [illegible]-B
46 FR 17216

April 7, 1981

Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Dear Mr. Secretary:

The Office of the Attorney General for the State of Maine wishes to file its objections to March 13, 1981 proposals by the Nuclear Regulatory Commission to amend its Rules of Practice. Ostensibly the proposals are to expedite the adjudicatory process for applications to construct and operate nuclear power plants, but we respectfully submit that the expected result of time-savings is illusory and the changes proposed are unwarranted for policy reasons as well as practical reasons.

The proposed changes to 10 CFR Part 2 which serve to eliminate the opportunity for formal discovery against the NRC staff will not save staff time and are unwise policy, shielding staff at a time when the public's demands for open hearings and nuclear safety are loud and clear. For the NRC to state that "It is contemplated that most of the discoverable information can ultimately be produced at the hearing on cross-examination of staff witnesses" reveals not only a misunderstanding of the differences between discovery and cross-examination, but also means that cross-examination will take significantly longer than is current practice. Full discovery is essential for effective and meaningful cross-examination; to shield the staff from discovery raises serious due process questions. It should also be noted that discovery serves not only to provide the means for an effective hearing but as a practical matter serves to narrow issues, not to delay the proceedings as NRC apparently believes. By taking away the ability to cross-examine NRC staff members, the proposed change inhibits effective participation in NRC proceedings by deleting the most important means of leaving the bases of the staff positions; it will also complicate the record and may well be more time-consuming than current practice.

We also object to efforts aimed at denying the opportunity to file motions for reconsideration, as proposed by changes to 10 CFR

L-4-1, p1.2

§§ 2.751a(d) and 2.752, because the change seems to us to be counter-productive. Often an agency, rather than a court, is in the best position to review its orders to determine, for example, if it has made an unintended error or that an ambiguity has resulted but which can be easily resolved. The existing 5-day time period for filing objections ensures that objections are filed promptly and that the process does not suffer any significant delay.

We further object to the proposed change in the time limit for filing motions for summary proceedings. To allow such motions to be filed at any time, instead of 45 days prior to the time fixed for the hearing, appears to us to be a means of slowing down the process rather than expediting it. Parties to proceedings should know more than 45 days in advance of a hearing which issues can be resolved on the pleadings. To allow such motions after the hearing has started will force the use of time which is best spent on the merits of the case.

The Office of the Attorney General also objects to the other proposed changes in the NRC rules for reasons similar to those already stated. We are particularly concerned that the proposed changes might prejudice our role as intervenor in an existing proceeding (Maine Yankee's request for increased spent fuel storage capacity). We suggest that the proposed rule changes will not only have the potential of limiting parties' ability to obtain information which should be available to the parties, but will result, through the efforts of the parties to otherwise obtain the information if the rules are adopted, in a net loss of time for staff.

We appreciate this opportunity to express our views and trust that the proposed changes will not be implemented.

Sincerely yours,

JAMES E. TIERNEY
Attorney General

By: _____
RUFUS E. BROWN
Deputy Attorney General

_____
PHILIP AHRENS
Assistant Attorney General

PA:jg