COUNTY OF SUFFOLK

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DEPARTMENT OF LAW

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PROPOSED RULE PR-2
46 FR 17216

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

Re: Proposed Changes in Rules of Practice
for Domestic Licensing Proceedings

Dear Mr. Chilk:

As counsel for the County of Suffolk, a neutral intervenor in the Shoreham Licensing Proceeding (NRC Docket No. 50-322), I would like to address the following comments to the proposed amendments to Commission's Rules of Practice, 10 CFR Part 2.

It should be stated from the outset that the County looks dimly at the Commission's proposed changes, in view of the obvious compromise of the public's right to participate effectively in the licensing process, in favor of the applicant's time demands. The former should not be treated as an obstacle to the latter, since to do so is to overlook the purpose of the licensing process to license only a safe nuclear power plant. Rule changes aimed at expediting the conduct of adjudicatory proceedings by means of restricting intervenors' rights in said proceedings, contradict the "adjudicatory" nature of the proceedings and frustrate the purpose of the proceedings.

1) Eliminate formal discovery on the NRC Staff - Elicit discoverable information during cross-examination of Staff witnesses.

This proposed change is both unfair to intervenors and detrimental to the fairness of the hearing. If the Staff is under no obligation to produce significant background information in advance of the hearing, the other parties may be precluded from making adequate preparation for witness cross-examination. Not only might this result in a lengthening of the hearing process through the associated need for involved cross-examination, it may very well also result in the NRC Staff "mis-reading" the various parties' basis of concern. This could result in the Staff witnesses' not being adequately prepared, or unable to answer the questions, a fact which would lead to a need for the Staff to call up different individuals as witnesses.

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A further problem develops when "discoverable" information, new, and not available prior to Staff witness cross-examination, is elicited during the hearing. To provide a fair and high-quality process, witnesses for the various parties must be given an opportunity for preparation of rebuttal testimony regarding such issues. Lack of opportunity to develop issues of disagreement in advance of the hearing could cause lengthy delays and undermine the quality of fairness of the adjudicatory process.

2) Permit the Boards, when appropriate, to rule upon motions orally.

This proposed change could degrade the quality of the hearing process. Oral rulings, without the benefit of documented, reasoned, and logical thought and legal process, may well encourage premature or erroneous decisions. This proposed change when coupled with the next major proposed change is particularly troublesome.

3) Motions requesting reconsideration of prehearing orders are not permitted.

An oral ruling, made in response to a prehearing motion, would thus be incontestable in the process. Not only does this conflict with the quality goal desired by the NRC, it more than likely will result in an increase in the use of the appeal process, both within and without the NRC adjudicatory process. Additional delays are likely.

4) Permit the Board Chairman to act alone on prehearing matters.

Other than conflicting with the old adage - "two heads are better than one" - this proposed change should not affect the hearing process significantly. Since the proposed change would still permit the Chairman to consult with other Board members at his discretion, it probably only formalizes what is generally already common practice.

5) Eliminate the applicants' filing of a reply to other parties' proposed findings of fact and conclusions of law.

It is not clear whether this means that the normal practice of staggered filing of applicants' proposed findings followed by intervenors' proposed findings would be prohibited. If the change requires simultaneous filings of findings, it would seem the quality of the record would suffer from an elimination of reply findings. Since 40 days is allowed by the guide schedule for the filing of proposed findings, elimination of this step would not be necessary; rather, the schedule could be made by an expedited service process.

To require the filing of intervenors' findings of fact in advance of the applicants' findings might impose unfairly on the often limited and geographically separated resources of intervening parties. It would at best lessen the quality of the process and would not permit the natural selection of findings in general agreement possible with the three-step staggered process.

6) Permit motions for summary disposition at any time.

This proposed change would unfairly provide the advantage to the applicant and make much more likely the possibility of a party with extensive legal and technical resources overwhelming the limited intervenor with paper. With an expedited hearing process as has been proposed, a motion for summary disposition at the right moment could seriously degrade a party's preparation for cross-examination or testimony. The proposed language of 2.749 would provide twenty days for the response of other parties but it is not clear that the guideline schedule would be appropriately adjusted. If it is not, the quality of the process could be seriously impaired.

At least two additional comments are in order. No mention is made of the extent of the role of the ACRS in the hearing process. It is essential to the quality of the process that the ACRS have ample opportunity to evaluate and comment on the licensing review performed by the Staff. The results of the ACRS evaluation should be available to the parties in advance of the hearing. The expedited guideline schedule does not appear to provide such opportunity.

Secondly, the primary motivation for these changes to the Rules of Practice are stated to be so that construction of plants will not precede completion of the hearing process. This being the case, these expedited proceedings should not be applied to hearings for construction permits.

CONCLUSION

In conclusion, the NRC, through its proposed rule changes, should not be allowed to minimize public participation for expediency or safety for monetary reasons. In its own Special Inquiry Group, the NRC in its Rogovin Report acknowledged the significant impact intervenors can have on the safety of a plant, and in turn on the quality of the plant's performance.

> "... intervenors have made an important impact on safety in some instances -- sometimes as a catalyst in the prehearing stage of proceedings, sometimes by forcing more thorough review of an issue or improved review procedures on a reluctant agency. More important, the promotion of effective citizen participation is a necessary goal of the regulatory system, appropriately demanded by the public. Three Mile Island : A Report to the Commissioners and to the Public, Volume 1, pages 143-144."

A complete and thorough licensing review is essential for the conduct of a fair and thorough licensing review. Any shortcuts or rule changes which limit the review are likely to do a disservice to the quality of the proceedings, the participation of the public, and ultimately the safety of the plant.

Very truly yours,

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