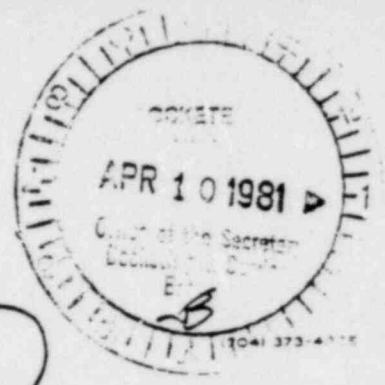


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PROPOSED RULE PR-2  
46 FR 17216

WILLIAM LARRY PORTER  
ASSOCIATE GENERAL COUNSEL

April 7, 1981

Mr. Samuel J. Chilk, Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Proposed Amendments to Rules of Practice  
For Domestic Licensing Proceedings  
46 FEDERAL REGISTER 17216 (March 19, 1981)

Dear Mr. Chilk:

As an electric utility strongly committed to nuclear power, Duke Power Company applauds the Commission's efforts to expedite the licensing process. We believe that your recently proposed amendments to the Rules of Practice are, with some exceptions, a step in the right direction. Our specific comments on certain of the proposed amendments are as follows:

Discovery From the NRC Staff - We do not endorse the elimination of formal discovery from the NRC staff. The long-term interests of fairness and efficient administration of licensing matters would not be served by the elimination of formal discovery from the NRC staff. Under the proposed amendment, it is anticipated that the NRC staff would respond to informal telephone and written requests for information wherever practicable and that most discoverable information could be produced at the hearing on cross-examination of staff witnesses. Because discovery aids in narrowing the issues, formal discovery of nonprivileged information should be permitted so long as conducted in a timely manner and limited by the concepts of relevance and materiality. Leaving until cross-examination at a hearing the discovery of certain information would not further the purposes of discovery and may in fact complicate and prolong hearings. With this and similar problems in the hearing process, more progress could be made by forceful and strict enforcement of current rules

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rather than resorting to an informal arrangement for discovery. Accordingly, we recommend against the adoption of proposed amendments to 10 C.F.R. Sections 2.720(h)(2), 2.740(f)(3), 2.740a(j), 2.740b(a), and 2.744.

Applicant's Right to File a Reply - It has been proposed that applicant's right to file a reply within 10 days to proposed findings of fact and conclusions of law by other parties be eliminated. To eliminate this provision would be undesirable because it would not substantially shorten the licensing process while at the same time it would undermine the fairness implicit in applicant's right to file a reply to other parties' submissions. Maintaining the right to file such a reply permits clarification of matters still in question and is consistent with traditional procedures providing for such a reply from the party having the burden of proof. Thus, 10 C.F.R. Section 2.754(a)(3) should not be amended as proposed.

Oral Orders by Boards - We support the proposed amendment to 10 C.F.R. Section 2.730(e) which would authorize oral disposition by the Boards of written motions. It should be noted that once a motion is ruled upon orally, the detailed rationale or basis for such a ruling could be provided in writing at a later time without slowing down the hearing process.

Action by Licensing Board Chairmen on Pre-Hearing Matters - We support the adoption of the proposal to amend 10 C.F.R. Section 2.721(d) to authorize licensing board chairmen to act alone on pre-hearing matters. It is understood that chairmen would retain discretion to consult with other board members on appropriate matters. Such a procedure should enhance the efficiency of the pre-hearing process.

Motions For Summary Disposition - We urge the Commission to adopt the proposed amendment to 10 C.F.R. Section 2.749 which would permit the filing of motions for summary disposition at any time and would authorize the presiding officer to set time limits. Coupled with authority of the Boards to dispose of motions orally, this amendment would result in more expedited licensing proceedings.

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Other Ways to Improve the Hearing Process - Regardless of whether all of the proposed changes to the Rules of Practice are ultimately adopted, one of the most effective ways to improve the orderliness, fairness and efficiency of the hearing process is through the selection and retention of forceful license board chairmen who will see to it that hearings are moved along with dispatch and with minimal repetitiousness and minimal procedural delay.

The licensing process could be made more orderly and more efficient if there were better coordination of proceedings by NRC staff. There should be a stronger commitment toward "getting the job done" and toward full preparation for hearings.

Serious consideration should also be given to reinstating the immediate effectiveness rule which was temporarily suspended by the addition on November 9, 1979, of Appendix B to 10 C.F.R. Part 2. Since TMI-related investigations have resulted in definitive guidance and requirements, the underlying need for the temporary suspension of this rule no longer exists.

We appreciate the opportunity to provide the Commission with our comments on this important matter of expediting and improving the licensing process.

Very truly yours,

  
William L. Porter

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