Virginia Electric and Power Company
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385
PROPOSED RULE PR-2
46 FR 17216

Jack H. Ferguson
Executive Vice President

April 7, 1981

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

Serial No. 236
NO/RMT:jmj

Attention: Docketing and Service Branch

Dear Sir:

Virginia Electric and Power Company has the following comments on the Commission's proposed amendments to 10 CFR Part 2. The amendments are intended to facilitate expedited conduct of adjudicatory proceedings on applications to construct or operate nuclear power plants. They are set out at 46 Federal Register 17216-17281.

1. We approve of the Commission's objective in preparing the proposed rule. But we doubt that it will do much in the way of speeding up the hearing process. In some respects the proposed rules go further than necessary to accomplish your objective; indeed they may lengthen hearings rather than shorten them. We elaborate on these conclusions in the following comments:

2. The proposed rule would eliminate, in all proceedings and at every stage of each proceeding, the opportunity to engage in formal discovery against the Staff. We oppose that proposal for three reasons:

   (a) According to the comments that accompany the proposed rule, the Commission contemplates that, in lieu of formal discovery, the other parties to a proceeding would rely on (i) the Staff's voluntary production of documents and information or (ii) examination of Staff witnesses at the hearing. But the Commission appears to favor the latter opinion; it says in the comments:

   > "It is contemplated that most of the discoverable information can ultimately be produced at the hearing on cross-examination of Staff witnessess."

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If the Staff should decide to rely on option (ii) for the production of information, rather than produce that information voluntarily before hearing, we fear that the result of the proposed discovery changes might be to lengthen the hearing process rather than to contract it. If the other parties to a proceeding, particularly the intervenors, must await the hearing before they can secure information from the Staff, there can be no doubt that two things will occur: First, it will transpire that in many instances witnessess will not have all the papers they need or will discover that some answers must be provided by absent Staff members. These developments will result in delays. Second, counsel questioning a Staff witness for the first time on the stand will time and again assert that the witness is presenting new information and that counsel needs a continuance while he digests it and further prepares his case. This might not lengthen a hearing beyond the 40 days contemplated in the comments to the proposed rule if the hearing involves only a few issues or if the issues are not particularly complex. But where numerous, difficult issues are involved, we have no doubt that intervenors will protest long and hard about new information obtained at the hearing and their inability to prepare adequately for questioning. Unless Atomic Safety and Licensing Boards are willing to turn a deaf ear to such requests, which we doubt, the effect of your proposed discovery changes may be to lengthen hearings substantially.

(b) The changes proposed in 2.720, 2.740, 2.740a, 2.740b and 2.744 would change the rules with respect to discovery aimed at the NRC Staff at all stages of the proceeding. If it is necessary to change those rules at all, a proposition that we have questioned in paragraph 2(a) above, there would seem to be no reason for changing the rules with respect to discovery aimed at the Staff prior to issuance of the Supplemental Safety Evaluation Report. The Staff's response may be that publication of the Supplemental Safety Evaluation Report is delayed by the demands that discovery imposes on the Staff resources, but, if so, the point is not made in the Comments on the proposed rule.

(c) By the same token, since the proposed rule is explicitly designed to speed up proceedings on "applications to construct or operate nuclear power plants," there is no reason whatever for modifying the rules with respect to discovery aimed at the Staff where the proceeding involves suspension, modification, revocation or other enforcement matters. We urge you not to change the discovery rules with respect to such proceedings.

3. We oppose the proposal to eliminate the applicant's opportunity to reply to the proposed findings of fact and conclusions of law filed by the other parties. The reply often serves to sharpen the areas of disagreement among the parties and in such cases should speed up the issuance of the decision. Only 10 days is involved in this process. Your proposal contemplates issuance of a Decision within

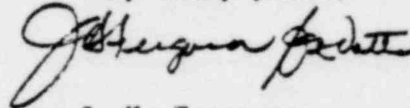
65 days after the filing of all proposed findings. We suggest that that period be decreased to 55 days. The truth of the matter is, preparation of the Decision should begin at least as early as the conclusion of the hearing. That being so, the Atomic Safety and licensing Board in fact has 105 days to prepare its decision. The retention of the applicant's opportunity to reply would not affect that time period at all.

4. We do not believe that any useful purpose will be served by providing that requests for reconsideration of prehearing orders will not be entertained. Your own proposed 2.752 would recognize that prehearing orders could be modified for good cause. We see no harm in permitting the parties to show good cause. Under your proposed 2.730, the Board could dispose of such showings orally, and so they need not delay the proceedings if the Chairman acts decisively.

5. We believe that your proposed changes to 2.721, 2.730 and 2.749 are well advised.

6. It is important to recognize that neither changes to your regulations nor any contemplated time schedule will be effective unless the Atomic Safety and Licensing Boards are disposed to implement them. To state the obvious, your proposal that decisions be issued within 65 days after filing of proposed findings will be meaningless if a Board decides to take twice that long. The most important step the Commission could take in expediting adjudicatory proceedings on construction permits and operating licenses would be to devise a system that would force Boards, within the bounds of fairness, to act promptly and decisively and to insist that the parties do the same at every stage of the proceeding.

Very truly yours,



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