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Carl Walske
President

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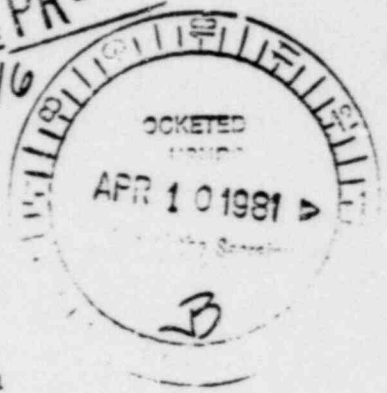

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTENTION: Docketing and Service Branch

Re: Proposed Changes in 10 CFR Part 2 for Expediting the NRC hearing Process (March 13, 1981)

Dear Sir:

We appreciate the opportunity to comment on the Commission's proposed changes to its Rules of Practice for the purpose of facilitating expedited conduct of adjudicatory proceedings on applications to construct or operate nuclear power plants. The views set forth below reflect consultation with AIF's Committee on Reactor Licensing and Safety, and with AIF's Lawyers' Committee.

As indicated in the Commission notice, the March 13 proposed changes essentially consist of a Commission declaration of a hearing schedule intended to serve as a guideline for NRC's Administration Judges. We certainly agree with the thrust of NRC's objective, that hearings should commence as soon as possible and proceed as expeditiously as possible, consistent with fairness. But, assuming its adoption, it is difficult to visualize how the proposed declaration will be translated into any substantial time savings in vigorously contested cases. That the NRC recognizes this is, in fact, fairly explicit in its proposal commentary. Substance aside, the tone of the NRC piece is hesitant and timid, suggesting that little conviction exists at NRC that this approach will accomplish such.

As a general observation, we wish to stress our viewpoint that, although we recognize that NRC's task calls for considerable sensitivity to the legitimate desires of conflicting interest groups, progress in expediting proceedings cannot be made without a dynamic leadership commitment by NRC that appears missing here. Thus, we both commend the Commission

A-41-1 pt 2

for its new initiative in the critical licensing area, while criticizing it for not yet appearing to recognize that the current grave situation calls for drastic action.

With respect to the specific changes proposed, we note our general support, with some reservations. The relief of the NRC staff from formal discovery responsibilities, as currently crafted, is of questionable value. It would be necessary to assure that potential savings here are actualized, and not nullified by unreasonable inquiries of the staff during the hearing phase of the proceeding, or similar substitute actions. Additional curtailment of discovery generally should also be considered, concentrating on the functional differences between administrative, vis-a-vis judicial, proceedings.

The change that would allow oral rulings in place of written ones should specify that the reasons to support the ruling must be entered into the record.

We do have doubts about the elimination of the applicant's present ten days to respond to proposed findings of facts and conclusions of law submitted by other parties. Since the applicant carries the legal burden of proof in these proceedings, the denial of the right to reply to other parties' submissions seems inappropriate. Similarly, while having no trouble with the change authorizing the Licensing Board Chairman to act alone on prehearing procedural matters, we question the appropriateness under current interpretations of the Atomic Energy Act of such action on prehearing substantive issues.

A final doubt is whether it makes much sense to expect the realization of substantial gains where success must depend to some considerable extent on a high degree of cooperation by both sides in hotly contested cases, and where sanctions for recalcitrance are largely absent.

Thus, we believe that the Commission's next steps can make more of a contribution to expediting the licensing process than this first proposal. The needed actions have been pressed vigorously by industry for some time, and include:

1) Repeal the suspension of the immediate effectiveness rule. Removal of this costly experiment would result in no unfair condition to intervenors since a stay would still be obtainable if unusual circumstances warranted.

2) Curtail sua sponte review. The length of the hearing process is generally proportional to the hearing's scope. If licensing and appeal boards were confined to addressing non-generic issues of actual controversy between the parties, improvement would result.

3) Insist on better overall management of the hearing process. A higher threshold for admission of contentions and greater control of cross-examination would produce benefits. Various suggestions which have been made and should be considered further include a contentions panel (to take rulings on contentions away from the hearing panel and make them more uniform), a summary disposition panel (to do the same to motions for summary judgment), and greater supervisory involvement on the part of the Commission itself, by having delays and the reasons for delays reported to it routinely so that some beginning accountability could be created.

4) Curtail litigation of generic issues in individual proceedings. Most susceptible issues should be resolved by NRC's generic rulemaking mechanisms.

5) Curtail relitigation of issues. A more mature philosophy of when it is appropriate to reconsider issues already considered at length should be developed, particularly with respect to reconsideration of issues at the operating license stage that had been reviewed at the construction permit stage.

6) Utilize staff resources more effectively. The question of utilization of staff resources and the basic role of the staff in the hearing process should be reassessed. Similarly, the functioning of the Appeal Board should also be reviewed for possible new efficiencies.

7) Press Congress for prompt legislation on interim operating authority.

The clear implication of these comments is that we respectfully suggest that NRC has proposed only an easy first move, while it has not yet shown the will to resolve the more difficult steps that have been ventilated and are ready for application.

As the AIF Lawyers' Committee Chairman recently testified before the Congress, many in industry now believe that a fundamental question should be addressed by NRC, which is: Does the current hearing process provide a safety benefit to the public commensurate with its cost? If the answer, as it seems to us, is no, something far greater than minor, band-aid changes to the existing system is surely needed.

AIF and its committees would be pleased to assist the Commission in this matter in any way we can.

Sincerely,

Carl Walske /HSP

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