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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



COMMENT TO THE COMMISSION
ON PROPOSED AMENDMENTS TO
THE NRC RULES OF PRACTICE
FOR DOMESTIC LICENSING PROCEEDINGS
Expediting the NRC Hearing Process



The New York Public Interest Research Group, Inc. (NYPIRG) finds the proposed amendments to the NRC Rules of Practice unacceptable on the following grounds: 1) the proposed changes will not necessarily expedite the licensing procedure or result in a saving of time, effort, or money; 2) the elimination or short-cutting of procedural safeguards for intervenors inherent in these changes are likely to result in reduced vigilance and independent public oversight of the licensing process and hence reduced safety of plants ultimately licensed to operate; and 3) under existing conditions of inadequate NRC budget and staff to satisfactorily police the construction, maintenance and operation of currently licensed reactors, any speed-up of the licensing process may, in the long run, greatly increase the societal cost (human and economic) of nuclear power by increasing the likelihood of accidents.

A silent assumption of the proposed amendments is that staff time is not only limited, but is inadequate to do the job of completing the post-TMI review of safety at already existing plants, solving generic safety problems, finding a satisfactory solution to the decades-old question of the ultimate

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The New York Public Interest Research Group, Inc. (NYPIRG) is a not-for-profit, nonpartisan research and advocacy organization established, directed and supported by New York State college and university students. NYPIRG's staff of lawyers, researchers, scientists and organizers works with students and other citizens, developing citizenship skills and shaping public policy. Consumer protection, higher education, energy, fiscal responsibility, political reform and social justice are NYPIRG's principal areas of concern.

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disposal of high-level and long-lived wastes, and other critical matters affecting the public health and safety, and expeditiously licensing new plants.

NYPIRG is aware of testimony to Congress which reveals severe NRC staff shortages and large back-logs in inspection programs. Staff vacancies apparently cannot be filled to accomplish the normal NRC workload.

Logically, enlarging and improving the quality of staff would seem to be essential at this time. But if the Congress will not provide adequate funding for guaranteeing necessary staff enhancement (in numbers, training, and expertise), then it is obvious that licensing cannot be speeded up without sacrificing safety.

NRC may be under pressure (from industry, some Congressional representatives, and the current Administration) to speed up the licensing of new nuclear plants, but is, nevertheless, mandated by law to place public safety above all other considerations and pressures. We believe that it is counter-productive and irresponsible to attempt to do more with less, and we are gravely alarmed by the priority now being given by NRC to the licensing of new plants while the safety of operating plants is being neglected.

NYPIRG notes the failure of the proposed rule changes to show any evidence that the NRC has learned the most important lesson of the Three Mile Island accident: the fundamental change of attitude called for by every post-TMI investigation, including the Commission's own. The evidence is overwhelming that the TMI accident resulted from a pervasive assumption that nuclear plants were "safe enough," that serious accidents were "incredible," and that the appropriate spirit with which to approach licensing was one of haste. The Nuclear Oversight Committee has already noted, in its report of September 1980, the return at NRC to "business as usual." Now we see the even more alarming emergence of "business first" at the cost of reasonable prudence with respect to safety and the protection of the public. To give a higher

priority (in the allocation of limited staff time) to expediting the licensing of new plants while serious generic issues of several types remain unsolved --even while such matters as the ultimate disposal of wastes and the use of Table S-3 in licensing proceedings are under active adjudication-- is a clear violation of the primary legal obligation of the NRC: protecting the public health and safety.

When we examine the proposed rule changes, it is much easier to see how they would obstruct the role of intervenors and make likely the approval of unsafe plants than it is that they would accomplish the announced objective of promoting efficiency and saving time, or, for that matter, saving money for the utilities and the ratepayers. The proposed changes overlook the fact that the effect of past interventions by public interest groups has frequently been to reveal correctable safety deficiencies and regulatory practices, thus contributing to enhanced safety of nuclear power plants.

Considering the enormous cost to Metropolitan Edison of the TMI accident, intervenors have probably saved the utilities and their ratepayers vastly more than the costs incurred by any extension of the licensing process. The Rogovin commission, in urging public funding of intervenors, explicitly recognized the valuable service they perform. It is, perhaps, annoying in the short run to have an outsider point out and save you from your costly mistakes, but even purely economic prudence should make it obvious that it is self-defeating to cripple the role of intervenors in any way. Yet that is exactly what the proposed rule changes would primarily accomplish.

We particularly object to the proposed restrictions upon discovery (limitation to 25 days, and point 1. on p. 4). This change would make it easy for the staff to obstruct parties from obtaining information necessary to the preparation of their contentions and the planning of their conduct of cross-examination. No evidence whatever is offered to support the implicit position that the change would promote efficiency, and in fact it seems likely to have

precisely the opposite effect.

The same point applies to all the other proposed changes; it is assumed without so much as being explicitly asserted, that each will save time. Moreover, the drafters of the proposed amendments do not consider explicitly any of the other expectable consequences. Any change in procedures, however valuable they may appear on the surface, have the potentiality of causing the loss of other values. Hence, it is irrational and unwise to contemplate any such change of rules without a careful and deliberate attempt to examine all possible and likely consequences, carefully weighing benefits against losses.

In a democratic society, where procedural safeguards are often the only recourse citizens have against the economic power of corporations and the sovereign power of the government and its agencies, it is especially incumbent on a regulatory agency to give the most scrupulous attention to the impact of proposed procedural changes on the rights of the public. All such consideration is lacking here, and the framers of the document submitted for public comment should be admonished and censured for that failure.

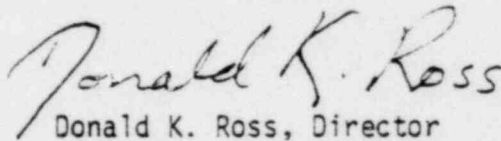
Because their adoption would probably result in abridging the protection of due process for intervenors in the public interest, we object to the rule changes summarized in points 4, 5, and 6 on pages 5 and 6. On difficult matters of judgment, such as arise constantly in licensing proceedings, there is no substitute for pooling the wisdom of several heads. That is the basic purpose of having Licensing Boards with more than one member, and it is subverted by the proposal (no. 4) to allow the Chairman to act alone on prehearing matters.

Eliminating the right of a party to file a reply to other parties' submissions would not save any time and would not be effective in its apparent intent to suppress disagreement. Since motions for summary disposition can be expected to be filed (with any hope of success) exclusively against inter-

venors, it is a serious threat to the latter's rights to propose (no. 6) to permit such motions at any time. No good case is made that the present procedures unreasonably hamper Boards in disposing of frivolous and purely obstructive interventions or that the possible saving in time would not be at the expense of justice, fair dealing, and the ultimate objective of public safety.

NYPIRG urges the Commission to withdraw the proposed rule changes entirely. If adopted, these changes in rules will ultimately redound to the discredit of the Commission by impairing the defense of the safety and health of the people of the United States, whom you are legally and morally bound to safeguard.

Respectfully submitted by


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