

May 18, 1981



SECY-81-307

RULEMAKING ISSUE (Commission Meeting)

For: The Commissioners

From: Leonard Bickwit, Jr.
General Counsel

Subject: FINAL RULEMAKING ON APPENDIX B TO PART 2 AS
IT APPLIES TO OPERATING LICENSES

Purpose: To obtain Commission approval of final
rulemaking on Appendix B relating to Commission
review of effectiveness of power reactor
operating license decisions.

Discussion: Background

Appendix B to Part 2 of the Commission's Rules of Practice was adopted some one-and-one-half years ago as an interim response to the accident at TMI, suspending the immediate effectiveness rule, 10 CFR 2.764, and inserting a system whereby the Appeal Board and the Commission would review any favorable Licensing Board decision on a nuclear power reactor construction permit or operating license application to determine whether to defer effectiveness. Since adoption of Appendix B, the numerous investigations of the TMI accident have been completed, NRC has developed a TMI Action Plan, and several operating licenses have been issued. However, another consequence of the TMI accident was that operating license staff reviews were delayed while construction of the affected plants continued and, as a result, operation of a number of nuclear power plants will now be delayed because of the Appendix B review process.

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SECY NOTE: This paper is identical to
-the paper distributed to the Commission
offices on Friday evening, May 15, 1981.

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For these reasons, on April 3, 1981, the Commission published in the Federal Register, proposed alternative modifications of Appendix B designed to expedite the review process. 46 Fed. Reg. 20215. Two alternatives were set out for public comment: Option A, which retained a period of deferred effectiveness pending expedited Commission review of favorable Licensing Board decisions; and Option B, which would grant immediate effectiveness to favorable Licensing Board decisions while retaining the Appeal Board and Commission review process of Appendix B.

Approximately 90 comments were received from interested individuals and organizations, divided along two distinct lines which may be characterized as intervenor- and utility-oriented positions. Intervenors, and over two-thirds of the commenters, favored retention of Appendix B, citing safety considerations primarily. Nuclear industry commenters, meanwhile, favored Option B of the proposed alternative modifications, though often stating a strong preference for full reinstatement of the immediate effectiveness rule. Several industry commenters also urged reinstatement of the immediate effectiveness rule for construction permits, a matter that is the subject of another, separate rulemaking.

Analysis of Comments

In addressing this issue, the Commission has four primary options:

- 1) retain Appendix B as written;
- 2) adopt Option A;
- 3) adopt Option B; or
- 4) reinstate the immediate effectiveness rule.

A description and analysis, including reference to appropriate public comments, of each of these options follows.

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1) Retain Appendix B as written: Under this option, effectiveness of a favorable licensing board decision would be deferred for about 80 days for separate Appeal Board and Commission stay reviews.

Those primarily concerned with health and safety aspects of nuclear power - the majority of the commenters - generally expressed a strong preference for retaining the current Appendix B review procedures. In their view, the sole basis for considering the modification of Appendix B was excessive concern for the financial costs attributable to delay in the operation of a limited number of completed plants. This motivation was criticized as inconsistent with the Commission policy that safety is paramount. 1/

The proposed modification was also criticized as inconsistent with the Kemeny Commission recommendation to increase both public and Commission involvement in licensing decisions. The California Energy Commission 2/ commented along these lines as follows:

By essentially reverting to the pre-TMI practice, [the Commission] ignore[s] the Kemeny Commission's finding that one of the deficiencies in the NRC's regulation of nuclear power plants was the Commissioners' isolating themselves from the licensing process. (Report of the President's Commission on the Accident at Three Mile Island - The Need for Change: The Legacy of TMI, October 1979, p. 51.)

The possibility of prejudicing appellate review of licensing decisions by allowing operation of a plant pending review was also cited. 3/

1/ See comment of the Citizens Assn. for Sound Energy (comment No. 10).

2/ Comment No. 40.

3/ Achieving criticality in a plant is claimed to prejudice consideration of conversion options. Also, the momentum attributed to an operating plant is claimed to weigh against reversals on appeal. See comments of the Public Citizen Litigation Group (No. 36), the California Energy Commission (No. 40), and the Environmental Planning Lobby (No. 43).

The justification provided in support of the modification was also attacked in the comments. The Public Citizen Litigation Group 4/ commented that "it is unnecessary and unwise to alter procedures that will affect over 90 proposed nuclear power plants because of alleged delays affecting a few pending applications." The Commission notice stated that substantive TMI requirements may be sufficiently settled to warrant modifying Appendix B. Commenters questioned this statement in light of the continuing nature of the accident and its aftermath (clean-up, GPU finances, possible releases to the environment). 5/ Commenters also questioned this statement on the ground that the staff and Licensing Boards are as yet without sufficient experience in applying these lessons learned. For example, the Union of Concerned Scientists (Comment No. 82) stated as follows:

It is difficult to discuss the basis for this apparent confidence, since the Commission has not yet reviewed even one contested operating license proceeding which presented TMI-related safety issues.

Nuclear industry commenters, on the other hand, generally viewed any Commission or Appeal Board sua sponte stay review as a burdensome waste of time, given the prior careful reviews of staff, ACRS, and Licensing Boards. We will turn in more detail to industry comments below.

2) Option A: As noted, this option would remove the Appeal Board from the Appendix B process, deferring effectiveness pending the completion of an expedited Commission review, intended to be completed within 10 days of fuel loading and low power testing decisions and 30 days of full power operating license decisions. This Commission review would be limited to significant policy issues, identified by the Commission from its own review of the case, and would allow, but not require, participation by the parties to the proceeding. Appeal Board review of the merits of licensing decisions and stay motions filed pursuant to 10 CFR 2.788 would proceed according to routine procedures.

4/ Comment No. 36.

5/ See comments of Congressman Panetta (No. 30) and Lynn Rudmin Chong (No. 90).

Few of the comments actually expressed a preference for Option A, though some approval as a compromise measure was indicated. There was skepticism that any Commission review within 10 or 30 days could be meaningful given the important issues yet to be resolved by the Commission.^{6/} As the Union of Concerned Scientists stated,

... the Commission has yet to face a number of basic safety questions relating to the sufficiency of the TMI related requirements which will be presented by pending contested cases. The resolution of these questions will require the setting of policy at the Commission level. ^{7/}

Hunton & Williams, on behalf of Long Island Lighting Company ^{8/}, expressed concern that Option A could prove to be counterproductive, diverting attention from a detailed analysis with its cursory review. Additionally, the stay criterion of Option A - whether "operation would prejudice correct resolution of serious safety issues" - was criticized as excessively vague. ^{9/} Finally, some industry commenters were doubtful that the review could in fact be completed within the 10- and 30-day periods. Commonwealth Edison commented along these lines as follows:

To be blunt, we do not believe the Commission is capable of completing its review of the issuance of a fuel loading/low power testing decision within 10 days, or its review of a full power operating license determination within 30 days. Recent experience clearly supports this judgment.^{10/}

^{6/} Comment of Commonwealth Edison (No. 74).

^{7/} Comment of the Union of Concerned Scientists (No. 82).

^{8/} Comment No. 14.

^{9/} See comment of the Environmental Planning Lobby (no. 43).

^{10/} Comment No. 74

One potential improvement to Option A was suggested in the comments of Duke Power Co.¹¹ Duke Power suggested that the Appendix B-type review could be waived where the Commission had previously provided applicable policy guidance.

3) Option B: Under this option, favorable licensing decisions would become effective immediately, with the Appendix B Appeal Board and Commission review proceeding concurrently with the operation of the plant. The commenters favoring Option B characterized as unnecessary and costly the delay resulting from Appendix B review. Their paramount concern was to avoid delays, and the accompanying large economic costs, oil consumption, and possible summer electrical energy shortages.

According to these commenters, immediately effective licensing board decisions do not compromise public health and safety because adequate protection is already guaranteed by numerous substantive and procedural safeguards, including NRC safety regulations and requirements, thorough staff and ACRS review of operating license applications, public participation throughout the proceedings, the availability of stays when justified under 10 CFR 2.763, and Commission authority under 10 CFR 2.206 and 2.204 to suspend or modify operation of a plant when necessary to protect the public interest. Additionally, the Commission's inherent supervisory authority enables it to step into any proceeding where its participation is deemed advisable. These commenters also point out that some delegation of authority is mandatory -- logistics would prevent the Commission from reviewing and ruling upon each and every Licensing Board decision without neglecting other responsibilities.

¹¹/ Comment No. 17.

4) Reinstating the Immediate Effectiveness Rule:
 As noted, many of the commenters favoring Option B actually indicated a preference for deleting Appendix B in its entirety. Sua sponte stay review by the Appeal Board or the Commission was characterized as superfluous, unnecessary, and illogical, a waste of precious NRC resources, especially where stay review pursuant to 10 CFR 2.788 is available.

Shaw, Pittman, Potts & Trowbridge 12/, on behalf of numerous utilities, expressed the belief that "the NRC staff's technical review process is the fundamental basis upon which we rely for assurance of the public health and safety." The staff and ACRS technical reviews may then be challenged by interested persons in a public hearing. Also, the lack of clear stay criteria to guide the Appendix B-type review causes concern that effectiveness could be deferred for arbitrary or insufficient reasons.

Analysis and Recommendations

The choice of options seems to depend on how one weighs two competing factors. The factors are (1) the benefit of increased assurance that nuclear power reactor operating licenses are issued only when consistent with Commission policy, and (2) the benefit of avoiding costs associated with postponing operation of completed plants. Those tending to downplay the first factor have confidence that the lessons have been learned from TMI and that the licensing review and hearing process below the Commission level will produce correct decisions. Those who emphasize the first factor have far less confidence that all the TMI lessons have been learned and are skeptical of the review process. Those who emphasize the first factor also view the cost factor as irrelevant or outweighed by safety considerations, while those who downplay the first factor regard the cost factor as decisive.

These competing factors were obvious when the two alternatives for modifying Appendix B were proposed by the Commission, and we have seen nothing new in the comments that would,

in our opinion, sway any of the proponents or opponents of the two options. Given our estimate that only Option A will attract a majority of the Commission, we have enclosed a draft Federal Register notice along the lines of Option A for Commission approval.

Three details remain for discussion. First, although we have drafted the attached Notice of Rulemaking with the standard for deferring effectiveness the same as proposed, we recommend that the standard be revised. The proposed standard was that effectiveness would be deferred if operation would prejudice correct resolution of serious safety issues. We believe that the use of the word "prejudice" could unduly restrict the Commission's review. It could be argued that under this standard effectiveness could be deferred only if it appeared to the Commission that operation would make the economic and other costs associated with otherwise desirable changes prohibitive.

We believe that the Commission would prefer a standard that is more flexible. Accordingly, we recommend a standard that would lead to a Commission deferral of effectiveness when this was in the public interest, taking into account the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by operation pending review, and other relevant public interest factors. Alternative regulatory language which would implement this standard is attached for your information on page 14a of the draft Federal Register notice.

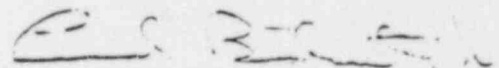
This change would not, of course, be responsive to those commenters who complained about the vagueness of the proposed standard. However, we believe that an admittedly vague standard is suitable here, given that it will allow greater flexibility to be exercised by the major policy-making arm of the NRC.

Second, we believe that the comment of Duke Power Company has some merit, and we recommend that serious consideration be given to modifying Option A so that the Commission could, before issuance of the initial decision, determine that no policy guidance was called for and waive application of the rule.

Finally, the format of the rule has been completely revised because the old Appendix format is not in accord with Federal Register guidance on proper format.

Recommendation:

That the Commission approve the attached draft notice of final rulemaking incorporating Option A, to become effective on publication in the Federal Register, after considering the desirability of revising the review standard and adding the waiver provision discussed above.



Leonard Bickwit, Jr.
General Counsel

Attachment: Draft notice

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ATTACHMENT

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Immediate Effectiveness Rule

Commission Review Procedures for
Power Reactor Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission hereby amends its review procedures for favorable Licensing Board decisions on nuclear power reactor operating license applications by requiring direct Commission review of those decisions to determine whether their effectiveness should be delayed pending normal agency appellate review. The amendment eliminates the Atomic Safety and Licensing Appeal Board review directed by Appendix B to Part 2 of the Commission's rules of practice. This amendment is in response to the progress which the NRC has made in incorporating into its safety requirements lessons learned from review of the accident at Three Mile Island, and the delays which have arisen in the licensing review process as a result of the diversion of NRC staff resources to the TMI review. The amendment is intended to reduce the length of time between a Licensing Board decision permitting fuel loading and low-power testing or full-power operation and the Commission's decision to permit the Licensing Board's decision to become effective.

EFFECTIVE DATE: [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Martin G. Malsch, Esq., Deputy General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555 (202-634-1465).

SUPPLEMENTARY INFORMATION: Appendix B to Part 2 was adopted some one-and-one-half years ago as an interim response to the Three Mile Island (TMI) accident in order to increase Commission supervision of adjudicatory licensing decisions involving power reactors. Under Appendix B, an initial decision by an Atomic Safety and Licensing Board favoring grant of a nuclear power reactor construction permit or operating license did not become effective until both the Atomic Safety and Licensing Appeal Board and the Commission had reviewed that decision and decided whether it should become effective. The review process contained in Appendix B nominally postponed the issuance of licenses for close to three months beyond a favorable Licensing Board decision.

Following the Three Mile Island accident, the Commission reassigned most of the staff who had been reviewing applications seeking authorization to construct or operate nuclear power reactors to other tasks, such as investigating the causes of the accident and developing new regulations based on the lessons learned. As a direct result of these reassignments construction of a number of plants will be finished prior to any effective decision by the Commission on the issuance of an operating

license. On April 3, 1981, the Commission published in the FEDERAL REGISTER proposed alternative modifications of Appendix B designed to expedite the review process. 46 Fed. Reg. 20215. Two alternatives were set out for public comment: Option A, which retained a period of deferred effectiveness pending expedited Commission review of favorable Licensing Board decisions; and Option B, which would grant immediate effectiveness to favorable Licensing Board decisions while retaining the Appeal Board and Commission review process of Appendix B. The alternatives were designed to reduce or eliminate the delay between completion of construction and issuance of an operating license following a favorable Licensing Board decision.

Approximately 90 comments on the proposed rule were received from interested individuals and organizations, divided along two distinct lines which may be characterized as intervenor- and nuclear industry-oriented positions. Intervenors, over two-thirds of the commenters, favored retention of Appendix B, generally citing concerns that elimination of Appendix B reviews would provide less assurance that TMI-related policy concerns would be included in decisions. Nuclear industry commenters, meanwhile, favored Option B of the proposed alternative modifications, generally citing the thoroughness of the review process before Appendix B takes hold. These commenters often stated a strong preference for full reinstatement of the immediate effectiveness

rule. Several industry commenters also urged reinstatement of the immediate effectiveness rule for construction permits, a matter that is the subject of another, separate rulemaking.^{1/}

SECY 81-____, a brief analysis of the public comments, was prepared for the Commissioners by the Office of the General Counsel and, along with a copy of all comments received, is available for public inspection at the NRC Public Document Room, located at 1717 H Street, NW., Washington, D.C.

The Commission believes that substantive licensing requirements are sufficiently settled in light of the numerous studies of TMI and regulatory actions taken in response thereto that the full Appendix B reviews of operating license decisions are no longer necessary. Therefore, some changes to Appendix B are warranted in order to avoid unwarranted and expensive delays.

Upon due consideration, the Commission has decided to adopt the proposed Option A. This decision is based upon a balancing of two competing factors: (1) the benefit of increased assurance that nuclear power reactor operating licenses are issued only when consistent with Commission policy; and (2) the costs associated with postponing operation of completed plants.

The Commission firmly believes that this amendment does not compromise its commitment to the protection of public health and safety or to a fair hearing process. Thorough technical safety reviews of license applications by the NRC staff and the Advisory

^{1/} See 45 Fed. Reg. 34279 (May 22, 1980).

Committee on Reactor Safeguards, the availability of public hearings on license applications, and the Commission's inherent supervisory authority form the basis of the network of procedural safeguards intended to implement this commitment to a fair decision process and public health and safety. These are all unaffected by the instant rule change. When warranted, stays of effectiveness remain available pursuant to the standard procedure and criteria of 10 CFR 2.788. The Commission review provided for in this amendment will focus narrowly on significant policy issues which have been brought to the Commission's attention by its personal staff offices. The Commission does not intend to review the entire record developed during the licensing proceeding.

Because these amendments relate solely to procedural matters and serve to relieve procedural restrictions on licensees, the Commission has determined to make them effective upon publication in the FEDERAL REGISTER.

Finally, the format of the rule has been revised to conform to FEDERAL REGISTER guidance on proper format, removing Appendix B and incorporating the Appendix B procedures, as amended, into 10 CFR § 2.764.

REGULATORY FLEXIBILITY ACT: In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule affects the Commission's Rules of Practice and procedures by permitting expedition of the licensing process.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of the United States Code, notice is hereby given of the adoption of the following amendments to 10 CFR Part 2.

1. 10 CFR Part 2 is amended by removing Appendix B.
2. 10 CFR § 2.764 is amended by revising paragraphs (a) and (b) to read as follows and by adding new paragraphs (e) and (f).

2.764 Immediate Effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

(a) Except as provided in paragraphs (c) through (f) of this section, an initial decision directing the issuance or amendment of a construction permit, a construction authorization, or an operating license shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to the review thereof and further decision by the Commission upon exceptions filed by any party pursuant to § 2.762 or upon its own motion.

(b) Except as provided in paragraphs (c) through (f) of this section, the Director of Nuclear Reactor Regulation or

Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing of exceptions, shall issue a construction permit, a construction authorization, or an operating license, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

* * * * *

(e) Construction Permits

(1) Atomic Safety and Licensing Boards

Atomic Safety and Licensing Boards shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. The Boards' decisions concerning construction permits shall not become effective until the Appeal Board and Commission actions outlined below in paragraphs (2) and (3) have taken place.

In reaching their decisions the Boards should interpret existing regulations and regulatory policies with due consideration to the implications for those regulations and policies of the Three Mile Island accident. In this regard

it should be understood that as a result of analyses still under way the Commission may change its present regulations and regulatory policies in important respects and thus compliance with existing regulations may turn out to no longer warrant approval of a license application. As provided in paragraph (3) below, in addition to taking generic rulemaking actions, the Commission will be providing case-by-case guidance on changes in regulatory policies in conducting its reviews in adjudicatory proceedings. The Boards shall, in turn, apply these revised regulations and policies in cases then pending before them to the extent that they are applicable. The Commission expects the Licensing Boards to pay particular attention in their decisions to analyzing the evidence on those safety and environmental issues arising under applicable Commission regulations and policies which the Boards believe present serious, close questions and which the Boards believe may be crucial to whether a license should become effective before full appellate review is completed. Furthermore, the Boards should identify any aspects of the case which in their judgment, present issues on which prompt Commission policy guidance is called for. The Boards may request the assistance of the parties in identifying such policy issues but, absent specific Commission directive, such policy issues shall not be the subject of discovery, examination, or cross-examination.

(2) Atomic Safety and Licensing Appeal Boards

Within sixty days of the service of any Licensing Board decision that would otherwise authorize issuance of a construction permit, the Appeal Board shall decide any stay motions that are timely filed. 1/ For the purpose of this policy, a "stay" motion is one that seeks to defer the effectiveness of a Licensing Board decision beyond the period necessary for the Appeal Board and Commission action described herein. If no stay papers are filed, the Appeal Board shall, within the same time period (or earlier if possible), analyze the record and construction permit decision below on its own motion and decide whether a stay is warranted. It shall not, however, decide that a stay is warranted without giving the affected parties an opportunity to be heard.

1/ Such motions shall be filed as provided by 10 CFR 2.788. No request need be filed with the Licensing Board prior to filing with the Appeal Board. Cf. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-338, 4 NRC 10 (1976).

The sixty-day period has been selected in recognition of two facts: first, allowing time for service by mail, close to thirty days may elapse before the Appeal Board has all the stay papers before it; second, the Appeal Board may find it necessary to hold oral argument.

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In deciding these stay questions, the Appeal Board shall employ the procedures set out in 10 CFR 2.788. However, in addition to the factors set out in 10 CFR 2.788(e), the Board will give particular attention to whether issuance of the permit prior to full administrative review may: (i) create novel safety or environmental issues in light of the Three Mile Island accident; or (ii) prejudice review of significant safety or environmental issues. In addition to deciding the stay issue, the Appeal Board will inform the Commission if it believes that the case raises issues on which prompt Commission policy guidance, particularly guidance on possible changes to present Commission regulations and policies, would advance the Board's appellate review. If the Appeal Board is unable to issue a decision within the sixty-day period, it should explain the cause of the delay to the Commission. The Commission shall thereupon either allow the Appeal Board the additional time necessary to complete its task or take other appropriate action, including taking the matter over itself. The running of the sixty-day period shall not operate to make the Licensing Board decision effective. Unless otherwise ordered by the Commission, the Appeal Board will conduct its normal appellate review of the Licensing Board decision after it has issued its decision on any stay request.

(3) Commission

Reserving to itself the right to step in at any earlier stage of the proceeding, the Commission will, upon receipt of the Appeal Board decision on whether the effectiveness of a Licensing Board construction permit decision should be further delayed, review the matter on its own motion, applying the same criteria. The parties shall have no right to file pleadings with the Commission with regard to the Appeal Board's stay decision unless requested to do so.

The Commission will seek to issue a decision in each construction permit case within 20 days of receipt of the Appeal Board's stay decision. If the Commission does not act finally within that time, it will state the reason for its further consideration and indicate that time it anticipates will be required to reach its decision. In such an event, if the Appeal Board has not stayed the Licensing Board's decision, the initial decision will be considered stayed pending the Commission's decision.

In announcing the result of its review of any Appeal Board stay decision, the Commission may allow the proceeding to

run its ordinary course or give whatever instructions as to the future handling of the proceeding it deems appropriate (for example, it may direct the Appeal Board to review the merits of particular issues in expedited fashion; furnish policy guidance with respect to particular issues; or decide to review the merits of particular issues itself, bypassing the Appeal Board). Furthermore, the Commission may in a particular case determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

(f) Operating Licenses

(1) Atomic Safety and Licensing Boards

Atomic Safety and Licensing Boards shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. The Board's decisions concerning fuel loading and low-power testing operating licenses or full-power operating licenses shall not become effective until the Commission actions outlined below in paragraph (2) have taken place.

In reaching their decisions the Boards should interpret existing regulations and regulatory policies with due consideration to the implications for those regulations and policies of the Three Mile Island accident. In this regard it should be understood that as a result of analyses still under way the Commission may change its present regulations and regulatory policies in important respects and thus compliance with existing regulations may turn out to no longer warrant approval of a license application. As provided in paragraph (2) below, in addition to taking generic rulemaking actions, the Commission will be providing case-by-case guidance on changes in regulatory policies in conducting its reviews in adjudicatory proceedings. The Boards shall, in turn, apply these revised regulations and policies in cases then pending before them to the extent that they are applicable. The Commission expects the Licensing Boards to pay particular attention in their decisions to analyzing the evidence on those safety and environmental issues arising under applicable Commission regulations and policies which the Boards believe present serious, close questions and which the Boards believe may be crucial to whether a license should become effective before full appellate review is completed. Furthermore, the Boards should identify any aspects of the case which in their judgment, present issues

on which prompt Commission policy guidance is called for. The Boards may request the assistance of the parties in identifying such policy issues but, absent specific Commission directive, such policy issues shall not be the subject of discovery, examination, or cross-examination.

(2) Commission

Reserving the right to step in at an earlier time, the Commission will, upon receipt of the Licensing Board decision authorizing issuance of an operating license, review the matter on its own motion to determine whether to stay the effectiveness of the decision. An operating license decision will be stayed by the Commission if it determines that operation would prejudice correct resolution of serious safety issues.

The parties shall have no right to file pleadings with the Commission with regard to this Commission review unless requested to do so by the Commission, except that no extensive stay shall be issued without giving the affected parties an opportunity to be heard.

on which prompt Commission policy guidance is called for. The Boards may request the assistance of the parties in identifying such policy issues but, absent specific Commission directive, such policy issues shall not be the subject of discovery, examination, or cross-examination.

(2) Commission

Reserving the right to step in at an earlier time, the Commission will, upon receipt of the Licensing Board decision authorizing issuance of an operating license, review the matter on its own motion to determine whether to stay the effectiveness of the decision. An operating license decision will be stayed by the Commission if it determines that it was in the public interest to do so, based on a consideration of the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by operation pending review, and other relevant public interest factors.

The parties shall have no right to file pleadings with the Commission with regard to this Commission review unless requested to do so by the Commission, except that no extensive stay shall be issued without giving the affected parties an opportunity to be heard.

The Commission intends to issue a decision regarding each fuel loading and low-power testing license within 10 days of receipt of the Licensing Board's decision and regarding each full-power operating license within 30 days of receipt of the Licensing Board's decision.

In announcing a stay decision, the Commission may allow the proceeding to run its ordinary course or give whatever instructions as to the future handling of the proceeding it deems appropriate (for example, it may direct the Appeal Board to review the merits of particular issues in expedited fashion; furnish policy guidance with respect to particular issues; or decide to review the merits of particular issues itself, bypassing the Appeal Board). Furthermore, the Commission may in a particular case determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

In operating license cases, the Commission's review under this section is without prejudice to Appeal Board or other Commission decisions, including decisions on stay requests filed under 10 CFR 2.788.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201);
sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1243,
Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Washington, D.C., this ____ day of May, 1981.

For the Nuclear Regulatory Commission,

Samuel J. Chilk,
Secretary of the Commission