United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510-6150

DEC 4 1989

Chairman Lando W. Zech, Jr.
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman:

The Senate Committee on Energy and Natural Resources is herewith transmitting S. 1966 for your study and report. Please send your report, along with 50 copies, to the Committee on Energy and Natural Resources, SD-364, Dirksen Senate Office Building, Washington, DC 20510, Attention: Mia' Miranda. Hand delivered copies should be taken to SD-317.

Submit your report within 30 days. If you cannot do so, let us know as soon as possible.

Sincerely,

J. Bennett Johnston
Chairman

Enclosure

Referred also to: DOE, OMB

CCS2
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

January 19, 1990

The Honorable J. Bennett Johnston, Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am responding to your December 4, 1989 request for the views of the Nuclear Regulatory Commission (NRC) on S.1966, the "Advanced Nuclear Reactor Research, Development, and Demonstration Act of 1989." The Commission appreciates your extending to us an opportunity to comment on this bill.

The Commission believes that the policies embodied in S.1966 are sound. The specific provisions of S.1966 are improved in certain respects over the specific provisions of its predecessor bill, S.2779 (100th Congress). Also, the licensing objectives set forth in S.1966 are largely consistent with 10 C.F.R. Part 52 (enclosed), which is the NRC's regulation establishing a framework for the standardization and combined licensing of advanced reactors, including those of modular design.

Nonetheless, we believe that the specific provisions on licensing in S.1966 should be revised in certain respects. Revisions are needed in subsection 5(f)(1), the new subsection on hearings between construction and operation of the types of facilities covered by the bill. The provisions in this subsection differ from the NRC's new Part 52 in certain important respects, and insofar as they differ, they tend to increase the risk of there being a lengthy and highly formal hearing between construction and operation of a facility.

For example, subsection 5(f)(1)(C) provides that <u>any</u> person may request such a hearing. Subsection 52.103(b)(1) of 10 C.F.R., on the other hand, takes the more conventional approach in adminstrative practice, found, for example, in section 189 of the Atomic Energy Act, of entertaining requests for hearings only from a person "whose interest may be affected" by the proposed agency action.

Moreover, although subsection 5(f)(1)(B) of S.1966 requires that the Commission use inspections, tests, and analyses to ensure that construction conforms to the combined construction permit and operating license, the bill does not require that the inspections, tests, and analyses actually be incorporated in the combined license. Unless they are incorporated, however, the license will contain only general criteria for judging the adequacy of construction. As a consequence, a request for a hearing, which can be made only on the grounds that the facility has not been constructed or will not operate in conformity with the license, will very likely be general, thereby hampering the Commission's ability to deal with the request and, if a hearing is granted, the generality will hamper the Commission's ability to narrow the focus of issues for consideration.

For these reasons, we recommend that paragraphs (B), (C), and (D) of subsection 5(f)(1) of S.1966 be deleted from the bill. There were no analogous provisions in the predecessor bill, and there is less reason for S.1966 to contain such provisions now that the Commission's new regulations on standardization and combined licensing are in place in 10 C.F.R. Part 52. If paragraphs (B), (C), and (D) of subsection 5(f)(1) of S.1966 were to become law, there would be one licensing process for standardized, advanced plants covered by the legislation and a different licensing process for standardized, advanced plants covered by Part 52 but not by the legislation. We are confident that Part 52 provides an adequate framework for the efficient licensing of all standardized, advanced nuclear facilities. If specific provisions of Part 52 prove to be inadequate, they can be changed readily through rulemaking.

We would also recommend two minor changes to two other paragraphs of S.1966. First, the intent of paragraphs 5(f)(2) and 6(d)(2) needs to be clarified. We interpret those paragraphs as assigning to the Secretary of Energy the responsibility for recommending to the NRC changes in the NRC's regulations that would improve prospects for the successful licensing of the facilities covered by sections 5 and 6 of the bill. We do not, however, interpret those provisions to require the Commission to adopt the regulatory changes suggested by the Secretary. The intent of these paragraphs would be clearer if the following changes were made (added words are underlined): ". . . the Secretary~~, in consultation with the Commission,~~ shall ~~identify~~ recommend to the Commission changes in Commission regulations . . ."

Second, these same two paragraphs, 5(f)(2) and 6(d)(2) of S.1966, provide that the Secretary shall identify regulatory changes within a given time after the Secretary has selected proposals for facilities covered by Sections 5 and 6. As we said last year in commenting on the analogous provision in the predecessor bill, the Commission believes that such recommendations would be far more useful if they were prepared before final designs were submitted to the Secretary for approval so that the designs could be developed in a manner consistent with any changed regulatory requirements. Therefore, we would again suggest that any such recommendations be made no later than eighteen months after enactment of this legislation.

We thank you again for the opportunity to comment on this important legislation.

Sincerely,

Kenneth M. Carr

Enclosure:
54 Fed. Reg. 15372
(10 C.F.R. Part 52)

cc: Senator James A. McClure