

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

March 31, 1981



Memorandum To: Chairman Hendrie
Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne

From: *LB* Leonard Bickwit, Jr.
General Counsel

Subject: SECY-81-182 -- DRAFT FEDERAL REGISTER NOTICE ON
MODIFYING APPENDIX B TO PART 2 AS IT APPLIES TO
OPERATING LICENSES

Attached is a revision of the draft Federal Register notice incorporating modifications suggested by Commissioners Gilinsky and Ahearne. This is intended to serve as a basis for discussion of this subject at today's meeting on Revised Licensing Procedures.

cc: SECY
OPE
OCA

Attachment:
As Stated

Contact: Richard Parrish, OGC
x43224

8104210 *296*

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Immediate Effectiveness Rule

Commission Review Procedures for Power Reactor Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule.

VG { SUMMARY: Following the accident at Three Mile Island, the Nuclear Regulatory Commission's staff devoted the bulk of its attention to investigating that accident and determining what remedial actions were required at operating reactors. As a consequence, the staff was unable to process applications for operating licenses at the normal pace. It now appears that the construction of a number of nuclear plants will be completed before operating licenses can be issued. In an effort to reduce or eliminate the delay between completion of construction and issuance of an operating license, the Commission is considering modifying Appendix B to Part 2 of its regulations to either (a) 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, or (b) allow a Licensing Board decision permitting fuel loading, low power testing or full power operations to become immediately effective.

DATES: Comment period expires _____ (30 days after publication in the Federal Register). Comments received after (insert date on which comment period expires) will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: All interested persons who desire to submit comments in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Docketing and Service Branch. Copies of comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

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

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SUPPLEMENTARY INFORMATION: Appendix B to Part 2 was adopted 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 to grant a nuclear power reactor construction permit or to authorize issuance of an operating license does not become effective until both the Atomic Safety and Licensing Appeal Board and the Commission have reviewed that decision and decided that it should become effective.

The review process contained in Appendix B nominally postpones the issuance of operating licenses for close to three months beyond a favorable Licensing Board decision.

Following the Three Mile Island accident, the Commission reassigned most of its staff who had been reviewing applications seeking authorization to construct or operate nuclear power reactors to other tasks, such as investigating the cause of the accident and developing new regulations based on the lessons learned. As a direct result of these reassignments [it appears that, if the licensing review process is not altered, construction of a number of plants will be finished prior to the issuance of an operating license. By reducing the length of time taken to determine whether a Licensing Board decision should become effective or by allowing a Licensing Board decision to become immediately effective, the Commission hopes to reduce or eliminate the delay between completion of construction and issuance of an operating license.

The Commission has now determined 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.^{1/} Therefore, in an effort to avoid unwarranted and expensive delays, the Commission hereby proposes to adopt one of two alternative modifications to Appendix B as it applies to operating license decisions.

^{1/} The continued application of Appendix B to construction permit decisions will be considered by the Commission in a separate rule-making proceeding. See 45 Fed. Reg. 34279 (May 22, 1980).

Summary of Appendix B Procedures

As it presently operates, Appendix B provides for both Appeal Board and Commission review of Licensing Board decisions in favor of granting operating licenses. According to the Appendix B schedule, issuance of such licenses ⁽¹²⁾ will be thereby postponed for a period of about 60 days for Appeal Board review and a further period of about 20 days for the Commission review. The Commission and Appeal Board reviews focus on possible reasons for delaying the effectiveness of the Licensing Board decision pending a further, more detailed review of the record. In instances where a further delay is not imposed, the license ^(will) may ^(ordinarily) issue within 80 ^{JA} days of the Licensing Board decision. The time periods available to the Appeal Board and the Commission can be extended as necessary. Prior to the TMI accident, Licensing Board decisions permitting low or full power operations generally became effective 10 days after they were issued.

Options for changing Appendix B

The two options which are being considered for changing the present system are as follows:

OPTION A - Expedited Commission Review

This option would entail expedited Commission review of Licensing Board decisions in order to determine whether the decisions should become effective or whether a

VG further delay should be imposed pending a more thorough
review of the Licensing Board's decision. The aim JA
 JA would be for Commission review ^(would) ordinarily to be completed
 within 10 days of a fuel loading/low power testing
 decision and within 30 days of a full power operating
 license decision and would be performed regardless of
 whether any party requested a stay. In the event that
 these time limits are not met by the Commission, the
 Commission would state the reasons for its further
 consideration and the time required for a stay decision,
 and the Licensing Board's initial decision would be
 VG considered stayed pending the Commission's ^(stay) ruling. The
 Appeal Board would not become involved in this expedited
review and the matter would ordinarily be decided by
 the Commission without the need for filings from the
 parties.

VG It is intended that Appeal Board review of any stay
 applications filed pursuant to 10 CFR 2.788 will begin
 concurrently with this Commission review. However, as
 noted, issuance of a license will no longer await an
 Appeal Board decision. An Appeal Board could ^(impose a) stay
issuance of a license ^(which) approved by the Commission ^(had passed forward) in
 which case operation of the plant, permitted by the
 Commission, would cease pending resolution of the issue

that prompted the stay. This scenario is made possible by the fact that Appeal Board review would have the benefit of filings from the parties and would proceed under the traditional stay criteria contained in 10 CFR 2.788, while the Commission's stay review would focus narrowly on significant TMI-related policy issues identified by the Commission from its own review of the case.

Depending upon the type of license being reviewed, Option A ^(would) could provide a time savings of 50 or 70 days over Appendix B in the normal case where a stay is not granted. Of course, decision times will vary under either system depending upon the complexity of the case.

OPTION B - Granting Immediate Effectiveness Concurrent with Appeal Board and Commission Review

This option would allow favorable Licensing Board decisions to become immediately effective. The license would then issue, pursuant to 10 CFR 2.764, within 10 days of the initial decision. Appeal Board and Commission stay review would follow under current Appendix B procedures.

JA The potential time savings under this option would be at least the 70-day difference between Appendix B procedures and immediate effectiveness (license issued within 10 days of favorable decision). Again, this period could vary depending upon the complexity of the case at issue.

Under either option, the standard Appeal Board review of the merits of Licensing Board decisions, as opposed to the stay determinations at issue here, would continue as before. The Commission wishes to emphasize that the proposed modifications of Appendix B are not intended to allow any reduction in the overall quality of NRC adjudicatory proceedings. The changes, if adopted, would be applicable to ongoing NRC adjudications.

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 that adoption of the following amendments to 10 CFR Part 2 are contemplated.

tion A

The Appendix B to Part 2 is amended by revising the first paragraph in Section 1 and the entire text of Section 2 and Section 3 to read as follows:

Appendix B - Suspension of 10 CFR §2.764 and Statement of Policy on Conduct of Adjudicatory Proceedings

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 otherwise authorize. The Boards' decisions concerning construction permits shall not become effective until the appropriate Appeal Board and Commission actions outlined below in sections 2 and 3 have taken place. The Board's decisions concerning fuel loading and low-power testing operating licenses or full-power operating licenses shall not become effective until the appropriate Commission actions outlined below in section 3 have taken place.

* * * * *

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.

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: (1) create novel safety or environmental issues in light of the Three Mile Island accident; or (2) 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

Construction Permits

Reserving to itself the right to step in at any earlier stage of the proceeding, including the period prior to issuance of the Licensing Board's initial decision, the Commission shall, promptly 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.

JA
from App. B

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.

Operating Licenses

Reserving the right to step in at an earlier time, the Commission shall, promptly 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 Three Mile Island accident-related 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 stay shall be issued without giving the affected parties an opportunity to be heard.

The Commission will seek 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. If the Commission does not act finally within these time periods, 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, the initial decision will be considered stayed pending the Commission'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.

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

B. Option B

1. The footnote to 10 CFR 2.764 is amended to read as follows:

¹ The temporary suspension of this rule for construction permit proceedings and special review procedures for operating license proceedings are addressed in Appendix B to this part.

2. The Appendix B to Part 2 is amended by revising Sections 1, 2 and 3 as follows:

Appendix B-Suspension of 10 CFR §2.764 with Respect to Construction Permits and Special Review Procedures for 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 otherwise authorize.

JA Construction Permits

The Boards' decisions concerning construction permits shall not become effective until the appropriate Appeal Board and Commission actions outlined below have taken place.

JA Operating Licenses

The Board's decisions concerning fuel loading and low-power testing licenses and full power operating licenses shall become effective immediately pursuant to 10 CFR 2.764, subject to possible stays issued by the Commission or Appeal Board. The operating license decisions will be effective pending the stay decisions.

2. Atomic Safety and Licensing Appeal Boards

Construction Permits

JA Within sixty days of the service of any Licensing Board decision that would authorize a construction permit, the Appeal Board shall decide any stay motions that are timely filed. 1/ For the purpose of the application of this policy to construction permit decisions, 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 all, within the same time period (or earlier if possible), analyze the record and 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.

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 license or permit prior to full administrative review may [^] 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's construction permit 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.

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 safety or
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 issues

Operating Licenses

Within sixty days of the service of any Licensing Board decision that would otherwise authorize a licensing action, the Appeal Board shall decide any stay motions that are timely filed. If no stay papers are filed, the Appeal Board shall, within the same time period (or earlier if possible), analyze the record and 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. 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

Construction Permits

Reserving to itself the right to step in at any earlier stage of the proceeding, including the period prior to issuance of the Licensing Board's initial decision, the Commission shall, promptly 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. 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 case within 20 days of receipt of the Appeal Board's decisions. If it 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, initial construction permit decisions will be considered stayed pending the Commission's decision. [... re operating licenses]

JA

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.

Operating Licenses

Promptly upon receipt of the Appeal Board decision on whether the effectiveness of a Licensing Board operating license decision should be stayed, the Commission shall review the matter on its own motion. 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 case within 20 days of receipt of the Appeal Board's decisions.

* * * * *

(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 March, 1981.

For the Nuclear Regulatory Commission,

Samuel J. Chilk,
Secretary of the Commission



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

MAR 24 1981

MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne

FROM: *EB* Leonard Bickwit, Jr., General Counsel

SUBJECT: SECY-81-168 -- PROPOSED RULEMAKING ON
FINANCIAL QUALIFICATIONS

The rule proposed by staff is intended to eliminate the Atomic Energy Act financial review for nuclear power reactor OL applicants and eliminate the Atomic Energy Act financial review for almost all nuclear power reactor CP applicants. The salutary concept underlying the proposal is that reviews that seem to serve no substantially useful purpose should be eliminated. However, the rule and supporting documents do not discuss the merits of several key questions that are at the heart of many intervenor contentions in the Atomic Energy Act financial qualifications area. We are concerned that a rule which disallows the raising of these questions in licensing proceedings without offering any supporting rationale will not survive judicial review.* These key questions are:

1. What are reasonable decommissioning costs at the end of a plant's useful life and is there, and if not should there be, reasonable assurance that there will be adequate funds for decommissioning? Current NRC rules in 10 CFR 50.33(f) seem to require both an estimate of decommissioning costs and reasonable assurance that they can be obtained.

* Of course there would be no legal difficulty with issuance of a rule that left these questions open for resolution in individual cases. However, the value of such a rule in reducing review and hearing time and resources would be limited.

CONTACT: Martin G. Malsch, OGC
X 41465

2. Should a utility be financially able to decontaminate and decommission a reactor that has been damaged by an accident (like TMI)? Current rules are not entirely clear on this point.

Both these issues should be addressed in the notice of rule-making.

The proposed rule does not address financial issues arising under NEPA. Issues regarding decommissioning costs and costs resulting from accidents, may be raised as a part of NEPA cost/benefit analyses. Unless these NEPA issues are addressed we believe that contentions which prove inadmissible under the Part 50 amendments will merely resurface under NEPA. We recommend that staff be asked to consider the financial issues arising under NEPA and advise the Commission whether such issues can be included in this rule.

cc: OPE
SECY
NRR
OELD
EDO

March 16, 1981



SECY-81-168

RULEMAKING ISSUE
(Affirmation)

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: PROPOSED RULEMAKING TO REDUCE OR ELIMINATE REQUIREMENTS
WITH RESPECT TO FINANCIAL QUALIFICATIONS FOR POWER
REACTORS

Purpose: To obtain Commission approval for the publication
for public comment of a notice of proposed rulemaking
to amend 10 CFR Part 50 that would: (a) eliminate,
in effect, the financial qualifications review for
power reactors at the OL stage and reduce the review
at the CP stage, and (b) permit the removal of
financial qualifications as an issue in ongoing and
future OL proceedings.

Discussion: Since the Commission's Order in Public Service Company
of New Hampshire (Seabrook Station, Units 1 and 2)
7 NRC 1 at 20, CLI-78-1 (1978), the staff has addressed
the Commission a number of times with respect to
altering or eliminating the requirements for a
financial qualification review for production and

Contact:
J. Petersen
492-8599

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SEP 25 1979

MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne

FROM: Howard K. Shapar
Executive Legal Director

THRU: Lee V. Gossick (Signed) T. A. Rehm
Executive Director for Operations

SUBJECT: FINANCIAL QUALIFICATIONS: NEED FOR LEGISLATION FOR THE
COMMISSION TO ABANDON FINANCIAL QUALIFICATIONS REQUIREMENTS
FOR APPLICANTS FOR LICENSES

Commissioner Gilinsky has asked my opinion, by a memorandum dated September 20, 1979, as to whether legislative authority would be required for the Commission to abandon its inquiry into the financial qualifications of applicants for licenses under section 182 of the Atomic Energy Act.

Section 182a of the Act provides in pertinent part:

Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license.

Thus, on its face, section 182a authorizes, but does not mandate, the Commission to require information as to the financial qualifications of applicants for all kinds of licenses.

The Court of Appeals for the First Circuit, in New England Coalition v. U.S. Nuclear, etc., 582 F.2d 87 (1978) stated that the Act gives the NRC complete discretion to decide what financial qualifications are appropriate.

In point of fact, the Commission (NRC and AEC) has required information concerning financial qualifications from applicants for facility licenses but not, in recent years, from applicants for materials licenses. Thus, although § 70.23(a)(5) of Part 70 provides as a condition for approval of an application for a license to possess and use special nuclear material, that

Contact:
J. M. Becker
492-7630

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8103260452

ENCLOSURE 2

"where the nature of the proposed activities is such as to require consideration by the Commission, the applicant appears to be financially qualified to engage in the proposed activities in accordance with the regulations in this part," such information has not been sought since the enactment of the Private Ownership of Special Nuclear Materials Act in 1964. Further, neither Part 40 nor Part 30 contains requirements, even conditional, for financial qualification of applicants for source material or byproduct material licenses.

The legislative history of the financial qualification provision in section 182a. is obscure. The report of the Joint Committee on Atomic Energy on S. 3600, the bill to amend the Atomic Energy Act of 1946 (S. Rep. 1699, 82d. Cong., 2d Sess.) stated as follows (p. 28).

"Section 182 sets forth the information that the Commission may require in any application for a license so as to assure the Commission of adequate information on which to fulfill its obligations to protect the common defense and to protect the health and safety of the public."

The main rationale for the provisions in Part 50 requiring financial qualifications information has been that the statutory provision was intended primarily to provide additional means of assuring that licensed activities would be carried out safely. Thus, in staff paper AEC-R 2/44, it was stated that "except for the Commission's interest in determining that an applicant can pay the Commission for special nuclear material used or consumed, the only purpose for our review of financial qualification is to determine that the applicant will have the financial resources to carry out the proposed activities safely."

The legislative history indicates that further assurance of protection of the public health and safety and the common defense and security was not the only purpose of the financial qualifications provision.

When the Atomic Energy Act of 1954 was enacted, it was expected that special nuclear material would be in short supply; accordingly, the financial qualifications provision was intended, at least in part, to assure that it was distributed only to persons financially qualified to put it to use.* However, the situation has changed; special nuclear material is not a scarce commodity.

* This is reflected in the first version of 10 CFR Part 70, published February 3, 1956 (21 F.R. 764), which contained requirements for financial qualification to engage in licensed activities, to assume responsibility for payment of Commission charges for use or consumption or loss of special nuclear material and to carry out the proposed use of special nuclear material within a reasonable period of time. Further, it should be noted that the financial qualifications provision in section 182 is reputed to have been modeled after 47 U.S.C. § 319(a) a provision of the Federal Communications Act. That provision has been construed as designed to assure that persons licensed to use valuable and scarce frequencies have the financial ability to utilize the frequency for public benefit, Graybar Electric Company v. Foley, 4th Cir., 273 F.2d 284, 291; Las Vegas Valley Broadcasting Co. v. F.C.C., D.C. Cir., 589 F.2d 594, 599.

In view of the rationale of the NRC and the AEC linking financial qualifications to safety, if the Commission wished to abandon the financial qualifications requirement, there would need to be a reasonable basis, derived from experience or otherwise, for doing so. In this connection, it may be noted that the Commission, in the Seabrook case, described the link between safety and financial qualifications as "seemingly tenuous" (7 NRC 19).

Summary

1. Section 182a of the Act on its face authorizes, but does not enjoin the Commission to impose financial qualifications requirements on license applicants.
2. There is nothing in the legislative history to suggest that a financial qualifications requirement is mandatory rather than discretionary.
3. Commission practice has been to impose financial qualifications requirements on applicants for facility licenses but not, in general, on applicants for materials licenses.
4. Since it has been long-standing Commission practice to impose financial qualifications requirements on facility license applicants because of the purported connection with protecting the public health and safety, a reasonable basis would be needed to justify a change, presumably that public health and safety is adequately protected by the Commission's safety regulations and inspection and enforcement program.

Original signed
by H. K. Shapar

Howard K. Shapar
Executive Legal Director

SEP 25 1979

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March 20, 1981

SECY-81-182



RULEMAKING ISSUE

For: The Commission

From: Leonard Bickwit, Jr.
General Counsel

Subject: DRAFT FEDERAL REGISTER NOTICE ON MODIFYING
APPENDIX B TO PART 2 AS IT APPLIES TO OPERATING
LICENSES

Purpose: To obtain Commission approval of a draft
Federal Register notice announcing that the
Commission is considering amending Appendix
B and soliciting comments from the public.

Discussion: The draft Federal Register notice proposes
two options for modifying Appendix B as it
applies to operating license decisions.
Option A provides for expedited Commission
review of operating license decisions before
granting effectiveness. Option B provides
for immediate effectiveness of operating
license decisions with concurrent Appendix B
review. The notice establishes a 30-day
period for public comment and includes appropriate
regulatory language for each of the options.

Recommendation: Approval of the proposed Federal Register
Notice.

Leonard Bickwit, Jr.
General Counsel

Attachment:
Draft Federal Register notice

CONTACT:
Richard A. Parrish, OGC
634-3224

SECY NOTE: This paper is identical
to advance copies circulated by OGC
to Commission offices on March 19, 1981.

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973250377*

March 30, 1981



SECY-81-202

POLICY ISSUE
(Commission Meeting)

To: The Commission
From: Leonard Bickwit, Jr., General Counsel
Subject: Draft Policy Statement on the Efficient Conduct of Licensing Proceedings
Discussion:

OGC has prepared the attached draft policy statement which is intended to combine elements of the draft statement submitted to the Commission by the Licensing Board Chairman and the alternative draft letter prepared by the Executive Legal Director. The ASLAP, ASLBP, and OELD have provided us with comments on the draft, which we have incorporated. OGC, the ASLBP, and OELD recommend that the Commission issue the attached statement. The ASLAP has no objection to its issuance. This revised draft differs from the earlier versions in one major respect -- it does not address scheduling. There is no reference to how quickly the hearing should commence after issuance of the staff SSER or how quickly Board decisions should be issued after the record is closed. Those matters were addressed in the Statement of Considerations accompanying the proposed procedural rules that have been published in the Federal Register for comment. We suggest that

Contact:
Trip Rothschild, GC
X-41465

SECY NOTE: This paper, which is identical to advance copies which were distributed to Commission offices on March 30, 1981, may be the subject of discussion among other related items at the open Commission meeting on Revised Licensing Procedures on Tuesday, March 31, 1981.

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