Three Mile Island
Public Interest Resource Center

1037 Maclay Street • Harrisburg, Pa. 17103 • 717-233-4241

June 24, 1981

Joseph Hendrie, Chairman,
Nuclear Regulatory Commission,
Washington, D.C. 20555

PR-2 (17)
(46 FR 30349)

Dear Chairman Hendrie,

As citizens of the Three Mile Island area with a heightened awareness of the importance of Nuclear Regulatory Commission decisions for us and all other Americans we vehemently object to the current NRC proposal regarding the expediting of licensing proceedings.

The proposed modification is grossly prejudicial against citizen intervenors as compared to license applicants and NRC staff. As a result of present NRC proceedings practice citizens and citizen groups are absolutely not able, prior to the start of hearings, to establish evidentiary facts which NRC proposes to require as a condition of being admitted to intervenor status.

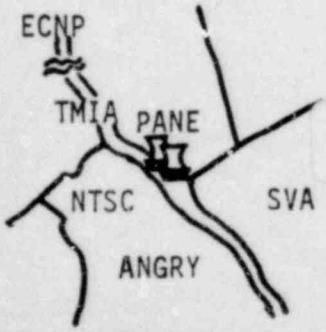
The proposed modification enhances our sense of being dealt with high handedly and unfairly by the NRC in the aftermath of the March 28, 1979 accident here at Three Mile Island. Our reading of the Kemeny and Rogovin investigations following the TMI accident is that more, not less, public participation has been called for. We are convinced that the proposed NRC rule to expedite nuclear reactor licensing processes is dangerous to our health and safety and should not be adopted by an agency of the United States government which should be serving the best interests of American citizens.

H002
S1/1
6/29/81 mdv

Sincerely,

Ed Nielsen

Ed Nielsen, President, TMI Public Interest Resource Center



44 Pt. 2

Atomic Industrial Forum, Inc.
7101 Wisconsin Avenue
Washington, D.C. 20014
Telephone: (301) 654-9260
TWX 7108249602 ATOMIC FOR DC

Carl Walske
President

June 25, 1981

DOCKET NUMBER
PROPOSED RULE PR-2 (16)
(46 FR 30349)

Samuel J. Chilk, Esq.
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Proposed changes to 10 C.F.R. Part 2

Dear Mr. Chilk:

The Atomic Industrial Forum appreciates the opportunity to comment on NRC's proposed amendments to its procedural regulations, as set out in 46 Fed. Reg. 30349 (June 8, 1981). The comments below reflect the input of AIF's Committee on Reactor Licensing and Safety and the Lawyers' Committee.

We support the proposed changes, particularly the change directed toward requiring a higher threshold for intervenor participation in NRC proceedings, as constructive steps towards the needed acceleration of the hearing process. We commend the Commission for this recognition that a stronger mechanism must now be developed for early identification and disposal of insubstantial contentions that for too long have been unduly costly of industry and regulatory resources. As the Federal Register item indicates, there is no doubt about the Commission's authority for such a step. Instead, the major issue is whether this step will effectively advance the Commission goal.

In this regard, we believe that Option B is preferable, providing for more expeditious disposal of inadequate contentions. We note that express guidance is needed on how the new procedures will be applied to pending cases. We also believe that the Commission should indicate its receptivity to suggestions for perfecting its new approach as further experience reveals whether the threshold for a reasonable intervention process has been raised adequately.

The Commission's other proposed changes tending to limit interrogatories, permitting oral responses to motions to compel discovery, and encouraging use of express mail for service of documents, also appear to be useful changes, which we support.

Sincerely,

Carl Walske

CW/pls

L-H-1-p.1.2

6/29/81 mdv

STATE OF ILLINOIS

Illinois Commerce Commission

MICHAEL V. HASTEN
Chairman

527 East Capitol Avenue
Springfield, Illinois 62706

June 25, 1981

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

Attention: Docketing and Service Branch

RE: 10 CFR Part 2 "Rules of Practice for Domestic Licensing Proceedings; Modifications to the NRC Hearing Process."

Dear Sir:

The Illinois Commerce Commission hereby submits comments on the revision of 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings; Modifications to the NRC Hearing Process."

The Illinois Commerce Commission supports the efforts of the Nuclear Regulatory Commission to efficiently resolve nuclear plant licensing issues. It is our position that ratepayers will benefit by expedited licensing procedures which will keep carrying charges at a minimum. Although we maintain that such efficient conduct of plant licensing hearings must remain consistent with the responsibility to protect the public welfare, we find that the modifications herein proposed fulfill that responsibility.

The Illinois Commerce Commission concurs with the Nuclear Regulatory Commission's assertion that licensing considerations should be limited to findings of fact. It is only by studious examination of the facts at hand that the Commission can proceed judiciously. Nevertheless, we feel it would be appropriate to provide a forum for the expression of concerns of those who would otherwise be excluded from the hearing process by the provisions of this proposal.

6/29/81 mdv

The stipulations to limit interrogatories and require express mail service of documents are particularly prudent measures. By limiting the number of interrogatories, the Commission will be able to focus upon those issues which are most crucial to the safe operation of nuclear facilities. Express mail service of documents will allow the licensing process to continue without deleterious interruption where such expedition is especially important.

We assume that decisions to deny requests for intervention or to dismiss contentions may be appealed to the Atomic Safety and Licensing Appeals Board, or ultimately, to the Commission. This final check on the process will insure fair treatment of all requests for intervention.

Thank you for this opportunity to respond to the proposed modifications to the NRC Hearing Process. The Illinois Commerce Commission endorses the efforts of the Nuclear Regulatory Commission to expedite the hearing process while upholding the responsibility to protect the public welfare and to welcome public participation in the hearing process.

Sincerely,

Michael V. Hasten
Chairman

MVH/kd

north shore alert!

box 5636 · cleveland, ohio 44101

SOLAR EMPLOYS, NUCLEAR DESTROYS

DOCKET NUMBER PR-2 (14)
PROPOSED RULE
(46 FR 30349)

June 25, 1981

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

mdv

ATTENTION: Docketing and Service Branch

Dear Sir/Madame:

I would like to comment on the proposed rule relating to the modification of the Rules of Practice for Domestic Licensing Procedures (10CFR Part 2).

The proposed revision to §2.714 (Option A) requiring potential intervenors in licensing proceedings to set forth the facts on which their contentions are based and to supply specific documentation for those facts places an additional burden upon intervenors whose resources are already overtaxed under the current procedures. They would be required, in effect, to argue their case before it was even admitted for hearing by the Atomic Safety & Licensing Board. Furthermore, intervenors would not be allowed to refer to any other sources later that were available at the time contentions were submitted but unknown to intervenors due to lack of resources.

Such a process would make sense in the case of NRC staff and applicant attorneys whose expertise and resources would be adequate to the challenge but the limited expertise and resources of members of the public are already strained by the licensing process now. To expect intervenors to prepare a meticulously thorough job of researching every document that might be of use within the short time alloted after the notice of the application is printed in the Federal Register would close the door on public participation in the licensing process. The time saved would not be worth the loss of such participation.

Furthermore, the Congressional Budget Office issued a report in March, 1979 (Delays in Nuclear Reactor Licensing and Construction: The Possibilities for Reform) stating that public participation in the licensing process was only the third greatest source of delay. Unanticipated declines in demand for electricity and difficulty in raising financing created the longest delays. The second greatest source of delay was due to resolution of NRC radiological safety and environmental issues.

Additionally, the CBO report emphasized the importance of public participation and quoted the Atomic Safety and Licensing Appeals Board as saying:

> Public participation in licensing proceedings not only 'can provide valuable assistance to the adjudicatory process',

6/29/81 mdv

> but on frequent occasions demonstrably has done so....many of the substantial safety and environmental issues which have received the scrutiny of licensing boards and appeal boards were raised in the first instance by an intervenor.
>
> This is not to say that every intervenor is equipped to make a meaningful contribution...(but)...the Commission's summary disposition rule provides an ample safeguard against an applicant or the regulatory staff being required to expend time and effort at a hearing on any contention advanced by an intervenor which is manifestly unworthy of exploration.

A full and open consideration of the issues at hand in the licensing of any nuclear power plant is absolutely crucial to the safe and competent operation of such plants. I have not forgotten how little consideration was given the accident that took place at the Davis-Besse Nuclear Power Plant on September 24, 1977 even after employees of the NRC and the Babcock & Wilcox Company attempted to warn their respective employers. A pilot-operated relief valve failed to close and water began pouring out of the pressure vessel but the reactor operator turned off the emergency core cooling system as he was trained to do. If adequate notice had been taken of the warnings following that accident, the accident at Three Mile Island in 1979 might have been averted.

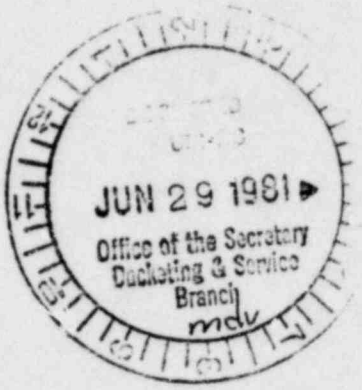
Lastly, the proposed rule places all the additional burden upon the intervenor and none upon the NRC staff and applicant. They should at least be required to list all their sources in a similar manner. Public participation in the regulatory process is part of the democratic tradition. If this participation is to be curtailed in the interest of "streamlining" the licensing process, the NRC staff and applicants should share that burden.

Sincerely,

Amy Hubbard

cc: Dan Wilt

PROPOSED RULE PR-2 (13)
(46 FR 30349)



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

6/23/81

Sirs:

I am writing in regard to the N.R.C.'s proposed changes in licensing hearings. I am strongly opposed to these changes which would further decrease the public's ability to participate in the decision of licensing a nuclear power plant. It is bad enough that the nuclear industry is "regulated" only by itself. Under these new changes, it would seem that opposition to the licensing could be disregarded merely on the technicality that it wasn't presented in the proper manner. It would give ultimate control to the members of the NRC board to determine whether or not the opposition to the licensing was "valid". It would also give little opportunity for the public to collect information about proposed licensing cases to be able to compile it in the form that the NRC requests.

Acknowledged by card. 6/29/81 mdv

A-44, pt. 2

DOCKET NUMBER
PROPOSED RULE PR-2 (12)
(46 FR 30349)

JUN 22 1981

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Chilk:

We appreciate the opportunity to comment on the proposed changes to the NRC's Rules of Practice as published in the June 8, 1981 Federal Register. TVA supports the Commission's efforts to make the hearing process more efficient and responsive to the public interest.

In our view, either of the proposed changes to the requirements for intervention contained in 10 C.F.R. § 2.714 (1981) would improve the hearing process. The modifications would focus factual issues early in the proceedings, allow groundless contentions to be rejected without consuming an inordinate amount of staff and board time, and provide a sound basis on which discovery limitations can be based. Either the proposed change or its alternative would be fundamentally fair, as both do no more than require that an intervening party give adequate notice of the matters sought to be litigated. Additionally, the alternate proposal of requiring an intervening party to establish a prima facie case is clearly sound. It is similar to the procedures used in many other types of Federal administrative proceedings. If either modification is adopted, the required factual bases, we believe, should be set out in an affidavit by the person or persons having knowledge of the facts.

While the proposed changes to section 2.714 are desirable, the intended improvements in the conduct of adjudicatory proceedings can be accomplished only if licensing and appeal boards construe and apply the provisions of that section in a judicious manner. If the changes to section 2.714 are adopted, we hope that the Commission's supporting policy statement of considerations strongly directs the boards to strictly apply the requirements to prevent egregious delays in the future. This could be accomplished by requiring that factual bases supporting intervention be set forth in the same detail as that required of a party seeking to have a matter disposed of in a summary manner. We also suggest that the changes be applied retroactively in those proceedings where intervention may have already been granted but no hearing begun, or where a petition to intervene is pending.

Acknowledged by card 6/29/81 mdv

L-H-1 p1.2

Mr. Samuel J. Chilk

JUN 22 1981

Limiting the number of interrogatories permitted might seem desirable as a general proposition, but we would favor the proposed changes only if the limit were coupled with the proposals concerning delineation of contested facts. In many cases where numerous issues are raised, if contentions are not focused to begin with it may be impossible for an applicant or the staff to discern the disputed facts with only 50 questions.

Finally, the other changes noticed would be definite improvements to the Rules of Practice. If adopted and properly applied by licensing boards, we think the hearing process would be hastened.

Sincerely yours,

Herbert S. Sanger, Jr.
General Counsel

SHAW, PITTMAN, POTTS & TROWBRIDGE

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June 29, 1981

-2 (35)

(46 FR 30349)

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Proposed Rule for Modifications to the NRC Hearing Process, June 3, 198'

Dear Mr. Chilk:

This letter is in response to the notice of proposed rulemaking published in the June 8, 1981, Federal Register at 46 Fed. Reg. 30349. The comments are submitted on behalf of Alabama Power Company, Baltimore Gas & Electric Company, Carolina Power & Light Company, The Cleveland Electric Illuminating Company, Duquesne Light Company, Georgia Power Company, Kansas City Power & Light Company, Kansas Gas and Electric Company, Louisiana Power & Light Company, Ohio Edison Company, Pennsylvania Power & Light Company, The Toledo Edison Company, Union Electric Company, and Wisconsin Electric Power Company.

The rulemaking involves four proposals for amendment of 10 C.F.R. Part 2 which the Commission has under consideration for the stated purpose of facilitating expedited conduct of its adjudicatory proceedings. As discussed in more detail below, we are in favor of the proposed requirement that a

petitioner or intervenor provide an adequate basis for contentions being advanced, and we oppose a specific limit on the number of interrogatories that may be filed. We do not object to the Commission's proposals related to oral responses to motions to compel and the use of express mail.

We would also note that conforming changes should be made to the policy and procedure statement in Appendix A to Part 2.

Intervention in NRC Proceedings

Section 2.714(b) of the Commission's Rules of Practice requires that a petitioner for leave to intervene must set forth, with reasonable specificity, the bases for each contention which is being advanced as an issue to be litigated in the hearing. The proposed rule would add the following sentence to section 2.714(b):

> The supplement [to the intervention petition] must set forth a concise statement of the facts supporting each contention together with references to the specific sources and documents and portions thereof which have been or will be relied upon to establish such facts.

We believe the addition of this sentence to be consistent with the existing requirement that the bases of each contention be "set forth with reasonable specificity." Although licensing boards have not always required such facts and references, we have always believed this to be the only logical way to reasonably comply with the basic requirement as it now exists. The addition of the proposed sentence will serve to clarify requirements for supporting a contention, and will be effective in avoiding unnecessary controversies at this stage of the proceedings. We support the addition of the sentence to section 2.714 as stated in the proposed Option A.

We believe, however, that the discussion of the proposed rule at page 30350 of the Federal Register concerning sanctions may require clarification. The Commission there states that a presiding officer has the authority to impose sanctions on a person who fails to meet the requirements for presenting contentions, "including the power to dismiss a contention." Under current practice, a contention which does not meet the requirements of specificity and

basis is not admitted as a matter in controversy in the proceeding. The implication in the Commission's discussion that a presiding officer may impose a sanction other than exclusion of the deficient condition is a departure from current practice which is contrary to the intent of the proposed amendment.

Option B adds the same sentence to section 2.714(b) as is added by Option A, but also adds four new paragraphs to the section. These new paragraphs, in our view, are consistent with the Option A proposal. 1/ We read them to be not so much an alternative to Option A as they are a series of helpful statements which serve to clarify the new Option A sentence. The new paragraphs 2.714(b)(2) and (3), for example, set forth the test for determining whether the petitioner has adequately met the basis requirement as set out in paragraph 2.714(b)(1). The "genuine issue of material fact" test appears reasonable to us. It is not a very stringent test, and a petitioner with a legitimate concern meriting consideration by the licensing board would have little difficulty meeting it. 2/

1/ The Commission's discussion of Option B states that a petitioner must both (1) demonstrate a genuine issue of material fact and (2) state a prima facie case for each contention. The latter test suggests the requirement for an evidentiary presentation to support the admission of a contention. However, the proposed rule makes no specific mention of a requirement to state a prima facie case, although it does state that a contention will not be admitted if the facts asserted are "legally insufficient to support the contention." For purposes of these comments, we have assumed the rule would not require an evidentiary showing. We read the proposed rule to state that, in addition to demonstrating a genuine issue of material fact, a petitioner must also show that the facts alleged in support of the contention, if true, would constitute a prima facia case.

2/ We would suggest adding the word "referenced" after the word "documents" in the first sentence of paragraph (2) so that it will be consistent with the new sentence in paragraph (1).

A finding by the licensing board that a contention raises a genuine issue of material fact will be made without benefit of the pleadings and evidentiary filings of the various parties which would be involved in a motion for summary disposition on the pleadings pursuant to 10 C.F.R. §2.749. Thus, it should be made clear, either in the information accompanying the rule, or in the rule itself, that such a finding by the licensing board for purposes of admitting the contention as an issue to be litigated does not preclude or prejudice a later motion for summary disposition of that contention under section 2.749.

The question of admissibility of contentions has long been a source of extended arguments and misunderstandings in the early stages of licensing proceedings. The clarification provided in the Commission's proposals is badly needed, and would benefit all parties, as well as expedite the conduct of the Commission's adversary proceedings. We view Option B as a helpful and necessary clarification and elaboration of the Commission's basis and specificity requirements, and we would urge the Commission to adopt the Option B proposal.

Limit on Interrogatories

We oppose the proposal to place a specific numerical limit on the number of interrogatories which can be filed. Such a rule, in our view, is unnecessary, and carries a real potential to hinder rather than advance the Commission's goal of expediting the hearing process.

Modern discovery practice, as governed by the Federal Rules of Civil Procedure, is intended to enhance the free flow of relevant information among adversary parties, with a minimum of supervision by the court, and with protections against abuse of the process caused by filing unnecessary, unreasonable, or burdensome discovery requests. The Commission's discovery rules are based on, and patterned after, the federal rules. These discovery rules have worked reasonably well in NRC proceedings, and we are not aware of any significant reason for suggesting a change. 3/

3/ The Commission noted that more than 20 United States district courts have adopted rules limiting the number of interrogatories. Aside from the fact that these courts face problems not usually experienced in NRC proceedings, it should be noted that there are more than 70 district courts which have not adopted such procedures, and a number of them have specifically rejected such rules.

Although the Commission is proposing this amendment as part of its proposal to "facilitate expedited conduct of its adjudicatory proceedings," there is no discussion or explanation of how such a limit would facilitate the proceedings. In our view, it would have the opposite effect. Fifty interrogatories may be a lot, or a little, depending on the number and complexity of contentions which have been admitted. If a party feels the need for more than fifty interrogatories, it must first file its allotted fifty, and then argue before the licensing board about why it needs more. Not only does this automatically convert the first round of discovery into two consecutive, time-consuming rounds, it unnecessarily and prejudicially affects the party's ability to effectively conduct discovery. For example, the party would have to decide whether to seek less information than needed on all contentions, or forego discovery on some contentions. Or, if the party files more than fifty interrogatories, the discovery schedule for all may be delayed pending resolution by the licensing board. None of this should be necessary.

The proposed rule also has the potential for causing new and novel disputes among the parties which will protract the discovery period and require resolution by the licensing board. The party requiring more than fifty interrogatories can expect disputes over whether it has met the three tests set out in the proposed section 2.740b(c), i.e., whether the extra interrogatories are essential to its case, whether the information sought is available elsewhere, and whether the party was "improvident in its overall use of its first 50 interrogatories." Also, there are likely to be arguments over whether certain subparts of interrogatories, even though not designated as such, are to be counted against the limit. Arguments over whether or not a particular interrogatory is a "request for supporting reasoning relied upon," and thus not to be counted against a party's quota, promise to consume even more time. None of this is necessary.

The status of the information usually available to the various parties in NRC hearings, particularly facility construction permit and operating license hearings, does not lend itself to either the need for, or the desirability of, a limit on the number of interrogatories filed. The applicant and the staff go into the hearing with extensive documentation on the public record supporting their positions. In most cases, this should be sufficient; if another party has reasonable and proper need for additional, relevant information in the possession of the applicant or the staff, there is no

reason why there should be a presumptive, numerical limit on the party's ability to gain that information.

On the other hand, an intervenor may enter the hearing process with little or no background information on the public record in support of its contentions. The adjudicatory process is best served by enabling the parties to elicit as much information as is available which is relevant to the intervenor's accusations and charges. The proposal discussed above for amendment of section 2.714(b) is designed to elicit more of this type of information from petitioners and intervenors. It is inconsistent and counterproductive to propose in the same rulemaking an amendment which would tend to decrease the flow of such information.

The only reason cited by the Commission for proposing the limit on the number of interrogatories is to "alleviate strains placed on the resources of the participants in NRC proceedings when an inordinate number of interrogatories are filed." Each party has the obligation to divulge requested relevant information in its possession if not otherwise available. If a party, an intervenor for example, has little or none of the information requested, it is not a strain on its resources to so inform the requesting party; if it has the information, and it is relevant, it has the obligation as a party to the proceeding to turn it over. The Commission's Rules of Practice allow a party to seek from the licensing board relief from "annoyance, embarrassment, oppression, or undue burden or expense. . ." 10 C.F.R. §2.740(c). We are concerned about supplementing these measures with a new rule which would unnecessarily present discovery disputes for resolution by the licensing board. 4/

4/ As noted in the publication of the Commission's most recently promulgated amendments to Part 2, 46 Fed. Reg. 30328, 30329 (June 8, 1981), the current proposal to limit the number of interrogatories seems to have sprung from an earlier proposal (not adopted) to eliminate discovery against the NRC Staff. If that in fact is the principal intent of the current proposal, it might be preferable to invoke the often ignored provisions of 10 C.F.R. §2.720(h)(2)(ii) for protection of the Staff against unnecessary interrogatories. Ironically, the proposed amendments conflict with the existing section 2.720(h)(2)(ii) in a way that might

(continued next page)

Motions to Compel Discovery

We are not opposed in principle to the proposal to allow responses to motions to compel to be made orally during a telephone conference. In fact, we welcome the liberal use of telephone conferences to facilitate procedural matters. However, when a formal motion is before the licensing board, there may be instances where one or more parties find it necessary or desirable to have a record made of the response to the motion. In such event, a transcript should be made of the telephone conference, or some other satisfactory means should be provided for the licensing board to document the conference call.

Service

We do not object to the proposed amendments permitting the presiding officer to require service by express mail. Express mail is not available in all parts of the country, but we presume the licensing board would take this into consideration in exercising its discretion.

Very truly yours,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By _____
Bruce W. Churchill

BWC:cp

4/ (Footnote continued from page six)
erode some of the protection the Staff now enjoys; the new provision would make Staff answers mandatory, while under the existing provision, the licensing board "may" require the Staff to answer the interrogatories.

DOCKET NUMBER
PROPOSED RULE PR-2 (22)
(46 FR 30349)

WARREN SPANNAUS
ATTORNEY GENERAL

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

ADDRESS REPLY TO:
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POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

June 25, 1981

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

Re: Proposed Amendments to the U. S. Nuclear Regulatory Commission's Rules of Practice for Domestic Licensing Proceedings; Modifications to Adjudicatory Hearing Process (46 Fed. Reg. 30349)

Dear Mr. Chilk:

On June 3, 1981, you forwarded to the State of Minnesota a copy of a notice of proposed amendments to the rules of practice of the U. S. Nuclear Regulatory Commission (NRC) concerning domestic licensing proceedings, 10 C.F.R. Part 2. The notice and proposed amendments were subsequently published in the Federal Register at 46 Fed. Reg. 30349 (June 8, 1981).

The proposed amendments are a part of the NRC's recent effort to amend its rules of practice to expedite the NRC hearing process. 1/ This set of proposed amendments would, if promulgated, impose additional requirements upon persons seeking to intervene in a hearing, would limit the number of interrogatories that a party may file, would permit the Licensing Board to require oral answers to motions to compel, and would permit the Licensing Board to require service of documents by express mail.

The State of Minnesota by its Attorney General and its Minnesota Pollution Control Agency hereby submits its comments on the proposed amendments to 10 C.F.R. §2.714 which would impose additional requirements upon persons seeking to intervene in a NRC hearing. Minnesota takes no position with respect to the other proposed amendments published along with the notice.

1/ The State of Minnesota previously commented on another set of proposed amendments to the NRC's rules of practice which constituted a part of NRC's effort to expedite its hearings. (Letter of Jocelyn F. Olson and Marlene E. Senechal to Samuel J. Chilk, dated April 3, 1981.)

Acknowledged by card. 6/29/81 mdv.

AN EQUAL OPPORTUNITY EMPLOYER

COMMENTS ON PROPOSED AMENDMENTS

The NRC proposes to amend 10 C.F.R. §2.714 so that persons who petition to intervene and request a hearing would be required to set forth the facts on which any contention is based and the sources or documents used or intended to be used to establish those facts. The Commission official designated to rule on intervention questions could under the proposed rule dismiss or otherwise impose a sanction respecting any petition, request, or contention that is found not to satisy this requirement. The purpose of the requirement as stated in the notice is to "give other parties early notice of an intervenor's case so as to afford opportunity for an early motion for summary disposition where there is no factual dispute." (Notice at page 3.)

At face value this proposed new requirement seems innocuous enough, and its stated purpose is an acceptable one. However, this proposal needs to be viewed in the context of the NRC's stated motives for taking this action and also in the context of the practical impact this requirement could have on the public.

As a part of the NRC's effort to amend its rules of practice, the public has been informed that NRC needs to expedite its hearing process because of a problem that NRC is confronting which has arisen from staff reassignments that have resulted from the NRC's need to address the Three Mile Island accident. These staff reassignments have resulted in delays in pending licensing proceedings, with the result that some nuclear reactors will be fully constructed prior to the issuance of operating licenses. The financial consequences to licensees from this situation could be significant. This situation is claimed to be the cause for the need to expedite all present and <u>future</u> NRC adjudicatory hearings.

The State of Minnesota has previously stated its objection to the NRC's approach to its immediate problem. (Letter of Jocelyn F. Olson and Marlene E. Senechal to Samuel J. Chilk, dated April 3, 1981.) Instead of fashioning remedies to address the specific reactor licensing proceedings which are putting utilities in financial jeopardy, the NRC proposes to revise rules relating to all present and future licensing actions, the vast majority of which have nothing whatsoever to do with the problem. NRC appears to be using its present problem as a pretext for limiting public participation in matters which are of great importance to people and their state and local governments. Minnesota continues to object to NRC's efforts to restrict the general public from raising its concerns in NRC's licensing proceedings.

Minnesota strenuously objects to the following proposed language of 10 C.F.R. 2.714:

> The supplement must set forth a concise statement of the facts supporting each contention together with references to the specific sources and documents and portions thereof which have been or will be relied upon to establish such facts.

This language imposes highly unreasonable and unfair requirements upon intervenors.

The proposed language is unreasonable because it could be applied to require potential intervenors to have their entire cases-in-chief prepared prior to discovery and in an extremely short time period (between the notice of opportunity for hearing and 15 days prior to the prehearing conference). Minnesota finds particularly outrageous the discussion at pages 5-7 of the Notice which clearly indicates that the term "concise statement of the facts" could be construed such that a contention could be ruled inadmissible if an intervenor failed to note the specific page numbers or portions of a document upon which it intended to rely, or that an intervenor would be barred from introducing in the hearing a document if it was not referenced in the supplement to the petition to intervene.

The proposed language is unreasonable for the further reason that it imposes requirements which are more burdensome than the requirements of the Rules of Civil Procedure for either the federal or state courts. The NRC does not indicate why its requirements need to be more stringent than the courts', nor could it show such a need. The present requirements of 10 C.F.R. 2.714 are much more within the spirit of the pleading requirements of the courts. The present language, which requires that intervenors set forth the bases of their contentions "with reasonable specificity" is more reasonable and may be administered by the Licensing Boards to allow other parties to obtain notice as to how they should proceed to prepare their cases. Indeed, in Minnesota's experience the Licensing Boards have enforced the language of the present rule to obtain this desired result. Thus the proposed language is not only unreasonable but also unnecessary.

The requirements imposed by the proposed language are highly unfair when contrasted with the situation faced by applicants and the NRC staff, both of which have more resources than the average intervenor and both of which have months to prepare their cases

before the notice of opportunity for hearing is published.

CONCLUSION

Minnesota objects to the proposal of the NRC to impose additional requirements in 10 C.F.R. 2.714 upon persons who wish to intervene and urges the NRC to maintain the existing rule in its present form.

Very truly yours,

WARREN SPANNAUS
Attorney General
State of Minnesota

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General

Marlene Senechal

MARLENE E. SENECHAL
Special Assistant
Attorney General

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DOCKET NUMBER
PROPOSED RULE PR-2 (23)
(46 FR 30349)

June 26, 1981

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTN: Docketing and Service Branch

Dear Secretary Chilk:

This letter is in response to the invitation to comment on the proposed amendments to the Commission's Rules of Practice, 10 CFR Part 2, as set forth in your letter dated June 3, 1981, and the attachment thereto.

As a preliminary matter, we note the inconsistency in the effect of the proposed rules with the goal stated in the "Supplementary Information", at p. 2, i.e., "expedit[ing] the hearing process without reducing its quality or fairness." We assume that the concepts of quality and fairness of the hearing process apply equally to the treatment, and ability to participate, of intervenors as to other parties. Unfortunately, it appears that the proposed changes will have the result of reducing quality and fairness of intervenors' participation in the hearing process.

As we point out below, the obvious result of the proposed changes will be a great restriction in the intervenors' ability to participate in NRC proceedings. It is puzzling that the Commission should decide on such a course of action, particularly after expressions, in the reports stemming from investigations into the TMI-2 accident, that the opportunity for public participation should be enhanced. The Commission itself has acknowledged this need in the NRC Action Plan Developed as a

L-4-1, Pt.2

Acknowledged by card. 6/29/81. mdy..

Result of the TMI-2 Accident, NUREG-0660, Vol. 1 at p. V-3. We turn now to specific comments on the proposed changes.

* * *

1. Intervention requirements

It is apparent from the face of the proposed change to 10 CFR §2.714(b) that this revision is targeted at restricting the participation and role of intervenors in licensing proceedings, for no participants except intervenors are required to submit contentions. The revision imposes the requirement of submitting a "concise statement of the facts supporting each contention together with references to the specific sources and documents and portions thereof which have been or will be relied upon to establish such facts." In essence this requires that an intervenor put together its entire case, together with all supporting material, at the threshold of the proceeding before being allowed to intervene. Because discovery is allowed under the regulations only after the ruling on intervention, there may well be no way to provide this support for a contention so early in the proceeding, particularly since documents which the staff chooses to place in the Public Document Room are generally inadequate for this purpose.

The Supplementary Information notes that this amendment would "strengthen one of the purposes of the present rule which is to give notice to the parties and the adjudicatory board of a would-be intervenor's concern." This goal of giving notice is already well taken care of by the Commission's requirements in §2.714(a) that supplemental intervention petitions set forth each contention with basis and specificity.

The inequitable burden imposed by this proposed revision is highlighted by the fact that neither the staff nor the applicant is required to make any such showing of support for their positions, analogous to the present contentions requirement, let alone a more substantial showing as proposed to be required for intervenors.

The Supplementary Information, at p. 7, implies that an intervenor could later seek to establish facts or rely on sources not contained in the submittal if it could "show good

cause such as, for example, newly discovered facts, sources, or references not reasonably available when the contention was admitted." This provision, however, is not contained in the proposed rule. Thus it is difficult to foretell whether a licensing board would, indeed, admit newly discovered evidence, and if so, under what conditions. Further, the present practice under which intervenors submit new contentions or refine their old ones in light of facts obtained through discovery would appear to be eliminated by the proposed revision if such a showing is required.

Finally, it should be noted that supplemental intervention petitions are ruled upon very early in the proceeding, often before the staff has issued its recommendation and environmental assessment. Thus the issues are often not crystalized at the time the intervenor's submittal is required. The impossibility of establishing a case against an unseen document or unknown position is evident.

The attempts, in the Supplementary Information, at pp. 7-8, to justify the restriction of the right of intervention ignore the fact that the proposed amendments would eliminate, rather than refine, the participation of the public. When Congress created public participation rights it did not intend that the Commission restrict these rights to the point that intervention becomes impossible.* We do not dispute that the Commission may condition those rights on certain procedural prerequisites; however, it may not obliterate those rights without prior Congressional consent.

Option B to newly proposed §2.714 is even more egregious, for it allows the licensing board to rule on the merits of the contention based upon the intervenor's submittals. Since no discovery would have been had at this stage, and the intervenor is denied access to information establishing the merits of the contention, and the required information is in the hands of the parties opposing the petitions to intervene, it is clear that most, if not all, contentions would be summarily denied.

---

* This proposed revision bears great similarity to the second of three provisions, appended to the House supplemental appropriations bill HR 3400, which attempted to limit consideration of contentions in NRC proceedings to these where the intervenor made certain stringent preliminary showings. Those provisions failed to pass. Surely the Commission should not attempt to do by regulation what Congress has specifically declined to do by legislation.

2. Interrogatory Limitation

The proposed revision to §2.740b(c) limits to 50 the number of interrogatories filed by any party. This proposal again ignores the fact that the intervenors frequently have more limited resources than the staff and the applicant. Given the fact that interrogatories are often the least expensive way of obtaining discovery from a party, this revision can only have the effect of limiting intervenors' participation in discovery. Further, the rule does not appear to be tailored to the different types of NRC hearings. For example, a hearing on a particular operating license amendment may have very limited issues, more amenable to an across-the-board interrogatory limitation, in contrast to construction permit proceedings have a wide scope of issues to be litigated. Finally, the proposal further handicaps intervenors because it fails to take into account the number of participants adverse to the party filing the interrogatories. For example, if there is one intervenor aligned against both the staff and the applicant, the intervenor must split its 50 interrogatories in order to discover the position of each opponent. Conversely, the applicant and the staff could "combine forces" to aim a total of twice the allowable limit of interrogatories at an intervenor.

The proposed rule's provisions for leave to file additional interrogatories are clearly unworkable. Three requirements must apparently be met. The first gives the board the power to determine what is "essential for a party to prepare adequately its case", thus putting the board in the inappropriate role of assessing the litigation strategies of a party. The second requires the board to review all other sources of availability for the information, perhaps putting an undue burden on it. The third requires the board to review and evaluate, for lack of "improvidence", all previous interrogatories filed by the party. This again puts the board in the role of judging the party's litigating strategies. Further, such a judgment would be made after the first fifty allowable interrogatories were already on file. Thus a party who was forced to inquire only superficially into an opponent's case because of the inital limitation of 50, could later be judged "improvident" because of that forced superficiality.

The Supplementary Information, at p. 10, states that this proposed rule is "designed to alleviate strains placed on the resources of the participants in NRC proceedings when an inordinate number of interrogatories are filed". How it would affect any "strain" on the staff's resources is difficult to imagine, in light of the §2.720(h)(2)(ii) requiring the board to make certain findings before the staff answers any interrogatories at all. It is not apparent how strains on the resources of any other participant would be alleviated. In fact, the strain on the resources of the intervenors would be

greater under this provision because of the necessity of obtaining information by more expensive discovery methods. Finally, the board has broad power under §2.718 to regulate the course of discovery. This power could be used to prevent abuse of discovery without the artificial limitations imposed by the proposed revision.

3. Limitation of responses to motions to compel discovery

The proposed revision to §2.730, adding a new sub-paragraph (h), is similarly ill-advised. This provision would allow the board to dispense with written responses to motions to compel discovery, and to require such responses to be made orally. It is noteworthy that the amendment makes no provision regarding how much notice is to be given advising of the necessity of an oral presentation, nor is there a provision for a record of the presentation to be made for possible review by the Appeal Board, the Commission, or a Court. In this regard, it is patently unfair to the party against whom the motion is directed. Further, we are aware of no basis for the inference that filing of written responses in any way delays discovery, particularly since the board may always shorten the time for response under §2.730(c).

4. Service by express mail

The proposed revision to §2.712(c) allows the presiding officer to require service of papers by express mail. The Supplementary Information, at p. 11, makes clear the Commission's expectation regarding the imposition of such a requirement. For example, it would be imposed only on the party required to respond, and only in circumstances where expedition is paramount. While the idea of expediting service may at times be wise, these considerations do not appear in the text of the proposed rule. Similarly, no consideration appears to have been given to the expense of express mail. Surely the party filing the motion, if it desires speedy disposition, can request the board to shorten the time for reply and request a prompt ruling.

* * *

The Supplementary Information refers to the "Statement of Policy on the Conduct of Licensing Proceedings," 46 F.R. 28533 (May 27, 1981.) The conclusion to that statement of policy notes that, in the final analysis, what is needed is "a change in industrial practice: submittal of a more nearly complete design by the applicant at the construction permit stage." Surely this could be accomplished by the Commission with amendments to its rules, most notably to 10 CFR §50.35(a). It is puzzling why the Commission refuses to impose on an applicant the burden of submitting a more nearly complete application in its quest to expedite the hearing process, when it recognizes that the application is the source of the problem. The Commission's approach, of insisting upon attempting to restrict the hearing rights of intervenors, indicates a gross disregard for the valuable role played by intervenors in the congressionally-mandated hearing process.

Very truly yours,

Robert J. Vollen
Jane M. Whicher

Robert J. Vollen

Jane M. Whicher

DOCKET NUMBER
PROPOSED RULE PR-2 (24)
(46 FR 30349)

8275 Munson Rd.
Mentor, OH 44060

June 24, 1981

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

ATTENTION: Docketing and Service Branch

Gentlemen:

I would like to comment on the proposed amendments to the NRC's Rules of Practice which would modify the NRC hearing process.

In regard to the proposed changes to 10 CFR 2.714, I believe this amendment would excessively restrict public participation in the NRC hearing process. Intervenors do not have the same resources as do the NRC staff and the applicant; the latter are paid professionals whose job it is to prepare and to present their cases at hearings. Intervenors, on the other hand, are volunteers who must devote much of their limited time and money, often at the expense of job and family obligations, to the intervention process. To expect intervenors to review all applicable documents supporting contentions and to submit these references within 15 days prior to the pre-hearing conference is obviously unfair.

The public definitely has a right to participate in NRC hearings. The NRC is obligated to insure that the public health and safety is protected during the operation of nuclear power facilities; therefore, public intervention, as it furthers this goal, must be actively encouraged and vigorously supported. This proposed rule inhibits rather than encourages public participation and therefore should not be adopted.

The proposed changes to 10 CFR 2.740b are beneficial to all parties involved as they would prohibit the abusive filing of an excessive number of interrogatories which serve no purpose other than to harass intervenors. The proposed amendment limiting interrogatories to fifty should be adopted.

Sincerely,

Susan L. Hiatt

Susan L. Hiatt

4-4, Pt. 2

Acknowledged by card. 6/29/81 mdv.

DOCKET NUMBER
PROPOSED RULE PR-2 (25)
(46 FR 30349)

Louise Bradford
Three Mile Island Alert, Inc.
315 Peffer St.
Harrisburg, PA

June 25, 1981

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

ATTENTION: Docketing and Service Branch

Dear Sir/Madam:

Enclosed please find comments submitted on behalf of Three Mile Island Alert, Inc. in response to proposed rule changes to 10 CFR Part 2, 7590-01.

Sincerely,

Louise Bradford

Louise Bradford
Legal Representative

Acknowledged by card. 6/29/81 mdv

1-4-1, Pt. 2

NUCLEAR REGULATORY COMMISSION [10 CFR Part 2] RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS- Modifications to the NRC Hearing Process

1). Intervention in NRC Proceedings

TMIA has examined all the proposed rule changes dealing with expediting the NRC adjudicatory proceedings, for which the NRC has solicited comments. We are of the unqualified opinion that there is no single proposed change which will cause more damage to the effective intervention of a citizen intervenor and thus to the public's interest, than the rule requiring that an intervenor set forth in its supplement to its petition to intervene the facts on which the contention is based and the sources or documents used or intended to be used, including specific portions thereof, to establish those facts. We have no doubt whatsoever that the practical result of such a rule will be the elimination of citizen intervenors in licensing proceedings.

It is no secret that citizen intervenors are typically without the funds and expertise to match, or even approach those of an applicant or licensee. The consequences of this imbalance are innumerable and severe, but a most obvious one is that citizen intervenors do not have monetary resources or technical skill and knowledge to develop an entire case before an opportunity for discovery. While a citizen intervenor may have a perfectly valid and important contention needing thorough examination, we submit that it will never have a complete command of all the facts or expert treatises to support the contention at this early stage.

In addition, under this proposed rule, an intervenor will be forced to withstand "vagueness" motions which will inevitably be submitted by the applicant or licensee, further draining its resources, or sanctions possibly amounting to dismissal by the Board. Further, if a contention is fortunate enough to have survived, the intervenor will not be permitted to even use newly discovered facts or documents which support its contention, absent good cause (i.e., newly discovered facts, sources, or references not reasonably available when the contention was admitted). How, we ask, will such a rule futher Congress's clear purpose in protecting the public's health and safety through the licensing hearing process. The NRC, through such a rule, would be making a mockery of the hearing process, and thus plainly overstepping its bounds in areas where the Congressional purpose is clear. No one can reasonably expect that if a contention is removed from the hearing process because of the intervenor's inability to documents its contention sufficiently under this rule, an applicant or licensee, or even the staff as has been our experience at the TMI-1 restart hearings, will litigate the issue on its own.

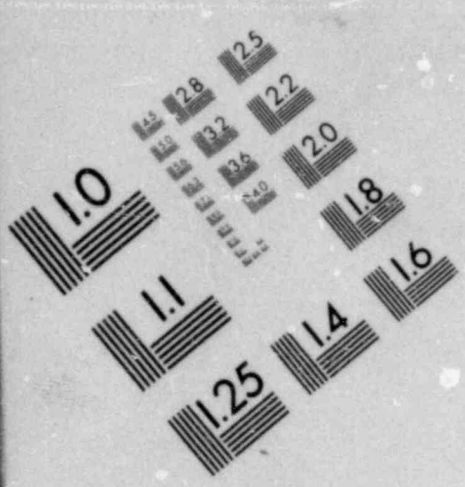
As we have stated in our previous comments to proposed rule changes aimed at expediting the adjudicatory process, we do not believe that hastening the process is an appropriate goal where the public health and safety will suffer. Once again, in the name of efficiency, this proposed rule change will burdent intervenors so, as to eliminate most intervenors, and thus most issues, from the hearing process. For these reasons, we strenuously object to this rule change.

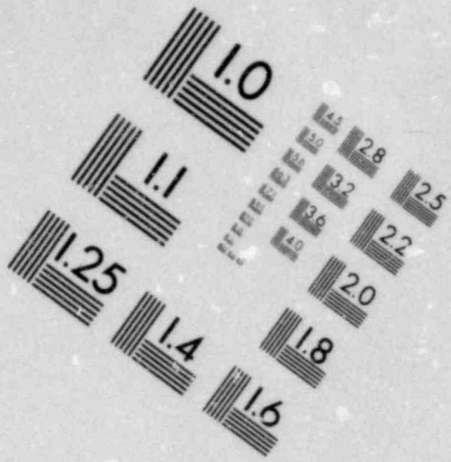
2). Limit on Interrogatories

In complex litigation such as NRC licensing hearings, a 50 interrogatory limit is entirely unreasonable. Intervenors depend heavily on the discovery process to develop their case, and for the reasons stated above, we object to such rules which chip away at intervenors rights in licensing hearings.

3). Service

Express mail is not only incredibly costly, but is often unavailable in smaller cities and towns where intervenors are typically located. We would object to any requirement that service by made by express mail under any circumstance.





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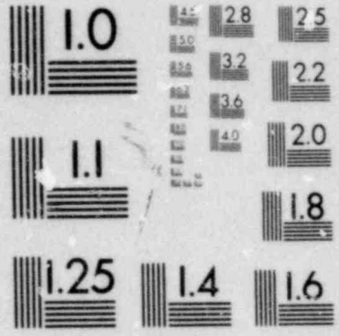

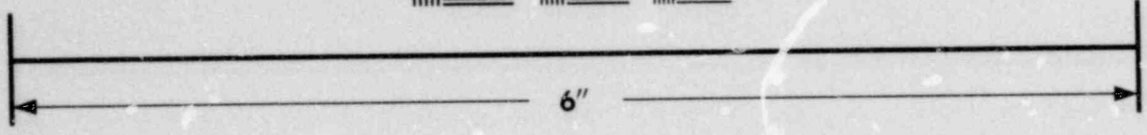

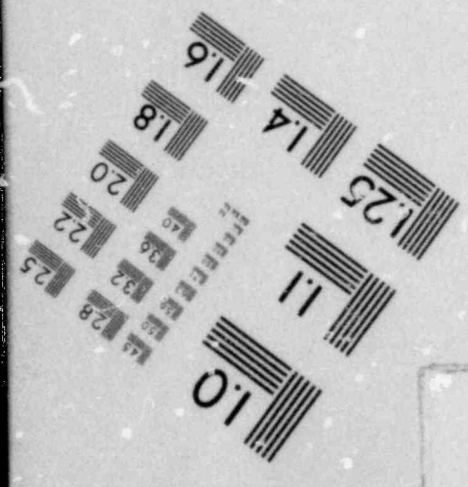

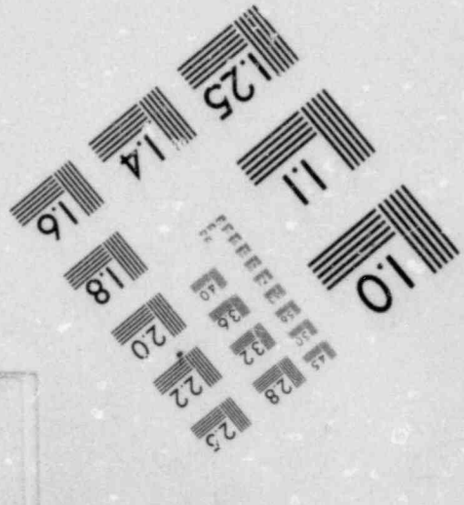

JOHN J. KEARNEY, Senior Vice President

EDISON ELECTRIC INSTITUTE The association of electric companies

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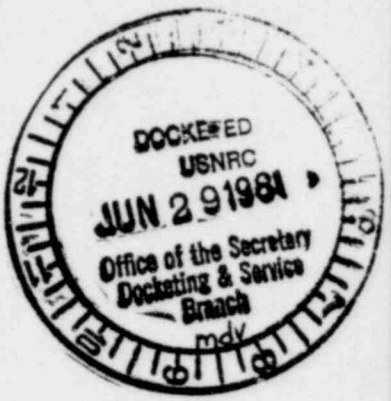
June 29, 1981



DOCKET NUMBER
PROPOSED RULE PR-2 (26)
(46 FR 30349)

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

Attention: Docketing and Service Branch

Dear Sirs:

This letter is filed on behalf of the Edison Electric Institute in response to the notice of proposed rulemaking entitled, "Modifications to the NRC Hearing Process," published for comment by the NRC in the Federal Register June 8, 1981, (46 Fed. Reg. 30349-30352).

The Edison Electric Institute is the association of the nation's investor-owned electric utilities. Its members serve 99.6 percent of all ultimate customers served by the investor-owned segment of the industry, generate more than 77 percent of all the electricity in the country and serve some 65 million ultimate electricity customers. All investor-owned electric utilities which operate, are constructing or plan to construct nuclear power plants are members of the Edison Electric Institute.

We should like to compliment the Commission and its staff on the considerable attention which they have devoted in recent months to improving the efficiency of the NRC licensing process. Although these efforts have accomplished some improvements, a great deal remains still to be done. It is in this context, as a further step in the long process of NRC regulatory reform, that we submit these comments in response to the June 8, 1981, proposed amendments to 10 CFR, Part 2. Accordingly, our comments are not confined to the specific amendments proposed in the notice. With the impending addition to the Commission's membership of new Commissioners, and the appointment of a new Chairman, we are taking this opportunity to include suggestions for power reactor licensing reform which briefly comment on the June 8, 1981, proposed amendments, but which, in addition, go beyond the scope of those proposals.

Our comments are divided into three sections, as follows:

A. Comments on the notice of proposed rulemaking published in the Federal Register June 8, 1981.

Acknowledged by card. 6/29/81 mdv

L-H-1, Pt. 2

B. Suggestions with respect to other procedural licensing reforms which have been considered but not implemented by the Commission.

C. A suggestion that the Commission proceed with improving NRC administrative procedures for ongoing regulation of operating licenses.

A. COMMENTS ON THE NOTICE OF PROPOSED RULEMAKING PUBLISHED IN THE FEDERAL REGISTER JUNE 8, 1981.

Responses filed by individual utilities which are members of the Institute will doubtless comment on specific procedural changes proposed in the Commission's Federal Register notice. For that reason, the Institute's comments on the notice of proposed rulemaking are confined to those of a more general nature.

1. Intervention in NRC Proceedings. We find it difficult to postulate a justification for the delay and expense imposed upon the government and other parties in NRC licensing proceedings by a practice which would condone the trial of contentions in the absence of a "genuine issue of material fact". Accordingly, we urge adoption of Option B.

We also suggest that paragraphs (4) and (5) of proposed subsection 2.714(b) be adopted by the Commission whether it elects to adopt Option A or, as we recommend, Option B. Paragraph (4) should specifically state that a contention raising only an issue of law will not be admitted for hearing.

2. We support the proposed amendments regarding interrogatories to parties, motions to compel discovery, service of papers and computations of time.

B. SUGGESTIONS WITH RESPECT TO OTHER PROCEDURAL LICENSING REFORMS WHICH HAVE BEEN CONSIDERED BUT NOT IMPLEMENTED BY THE COMMISSION.

Some of the following comments reiterate suggestions made by the Institute in earlier letters, particularly our letter dated April 7, 1981, (commenting on the Commission's notice of proposed amendments to 10 CFR, Part 2 published in the Federal Register on March 18, 1981 entitled, "Expediting the NRC Hearing Process") which have not yet been adopted or fully adopted by the NRC.

1. Immediate Effectiveness. The Commission has sufficiently addressed TMI-related requirements, and provided sufficient and adequate guidance to the Staff and Licensing Boards to implement these requirements. Therefore, the NRC should now restore CFR § 2.764 -- the immediate effectiveness rule -- as

it was in effect prior to March, 1979. To accomplish this end, we recommend that the Commission consider repealing from their regulations the amendment to § 2.764 promulgated May 28, 1981 at 46 Fed. Reg. 28627, and reinstate the immediate effectiveness rule as it existed prior to TMI.

The Commission states that the recent amendment to 10 CFR § 2.764 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 on whether to permit the Licensing Board's decision to become effective." 46 Fed. Reg. 28627. This amendment represents an unsatisfactory compromise which is so complex as to offer little hope that it will be effective to accomplish its stated purpose. Moreover, the amendment may itself become a source of controversy and litigation.

Effective implementation of the Commission's post-TMI requirements should be assured through effective administration of the NRC's regulatory program and not at the end of the licensing process by a delay in licensing after completion of Staff and Licensing Board reviews. Moreover, it should be noted that the process of initial power reactor start-up extends over a sufficient period of time (measured in months) after fuel loading that, in the unusual case where the Commission found it desirable, the Commission could initiate further review of any specific matter even after issuance of an effective full power operating license.

The amendment states that, "as a result of analysis still underway 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." 46 Fed. Reg. 28628. Such changes, if any, should be considered by the Commission in generic rulemaking proceedings and not at the end of lengthy specific licensing proceedings.

The amendment to § 2.764 applies also to Licensing Board decisions on construction permit applications, although the title of the Federal Register notice is limited to "Commission Review Procedures for Power Reactor Operating Licenses." The reasons briefly summarized above for restoring § 2.764 with respect to operating licenses are equally compelling with respect to Licensing Board decisions on construction permits. We urge the Commission promptly to reconsider these amendments and to restore the earlier text of § 2.764.

2.*/ The Commission should change its present policy by limiting Licensing Board review to matters put in contention by the parties.

Rather than being directed, like judicial tribunals, to resolve matters in dispute among parties, the hearing boards appear to be becoming another layer of technical review. This is evidenced particularly by the Commission's sua sponte rule which permits boards to raise matters not put in contention by the parties, and the Commission's December 18, 1980 policy change which requires the hearing boards to adjudicate the sufficiency of NRC post-TMI requirements for operating licenses.

3.*/ We recognize the desirability, as part of the Commission's recovery plan, of alleviating the burdens imposed upon the NRC Staff. For this purpose, we suggest abolition of the present practice which makes it incumbent upon NRC Staff to prepare written testimony on all controverted, and some uncontroverted, issues. The final environmental statement prepared in each proceeding by the NRC Staff with respect to environmental considerations, and the safety evaluation reports prepared by the Staff with respect to nuclear safety considerations, should suffice as NRC's prepared testimony. Of course, the Board should have the discretion in appropriate specific situations to request the Staff to prepare written testimony on specific matters where the Board believes such testimony will provide significant assistance to it in the Board's consideration of the issues; there is no need, however, for this to become a general practice.

4.*/ Safety or environmental concerns raised by intervenors which are generic in nature and not unique to the specific plant under consideration should not be admitted in the specific proceeding, but should be referred by the presiding board to the Commission for appropriate generic consideration and disposition.

5.*/ We believe it would be desirable for the Commission to designate a review committee, consisting of such members as a Commissioner, the Executive Director for Operations, and the Chairman of the Atomic Safety and Licensing Appeal Panel to fulfill an oversight function with respect to scheduling and general conduct of licensing proceedings in order to assure that the NRC staff and boards act with appropriate expedition and without prejudice to the rights of parties.

6. We urge the Commission to give further consideration to the adoption of a model schedule. We recognize that, in light of the unique circumstances of each contested licensing proceeding, no model schedule will be applicable to any specific proceeding. Nevertheless, adoption of a model schedule will provide some additional guidance beyond mere hortatory language for Atomic Safety and Licensing Boards.

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*/ The asterisks designate paragraphs which contain comments based upon remarks made in our letter of April 7, 1981 referred to above.

7. We are pleased that the Commission has adopted a final amendment to 10 CFR, Part 51 to eliminate alternative sites as a consideration in operating license reviews for nuclear power plants.

We urge the Commission to proceed rapidly with an amendment to 10 CFR, Part 51 also to eliminate such matters as need for the plant, need for power, and alternative energy sources at the operating licensing stage.

C. THE COMMISSION SHOULD UNDERTAKE SPECIFIC ACTIONS TO IMPROVE THE NRC ADMINISTRATIVE PROCEDURES FOR ONGOING REGULATION OF OPERATING LICENSES.

Because of the severe effects on electric utilities from unnecessary delays in the completion of construction permit and operating license proceedings, principal Commission attention properly has been devoted during recent months to the need for reform in NRC procedures in such proceedings.

As these and other reforms are adopted and the Commission begins to reduce its back-log of NTCPs and NTOLs, we believe it will be desirable for the Commission to turn its attention to improvement of its procedures for the administration of operating licenses.

We suggest that the Commission proceed with updating their adminstrative procedures with respect to such subjects as the following:

- Procedures for review and approval of licensee-initiated changes in such matters as fuel design, equipment design and operating parameters.
- Procedures for approval of major repairs.
- Procedures for imposition of new or additional requirements on operating licensees, including retrofit requirements.

Among other matters, the Commission should improve the effectiveness of § 50.59 procedures so as to eliminate unnecessary requirements for prior NRC approval of licensee-initiated changes.

The Institute appreciates the opportunity to submit these comments and suggestions.

Sincerely,

John J. Kearney

JJK:spd

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GAIL M. HARMON
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L. THOMAS GALLOWAY

DOCKET NUMBER
PROPOSED RULE PR-2 (27)
(46 FR 30349)

June 29, 1981

Secretary of the Commission
ATTN: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Comments of Proposed Rules to Modify the NRC Hearing Process, June 3, 1981

Dear Mr. Chilk:

Enclosed please find "Union of Concerned Scientists Comments on Proposed Rules to Modify the NRC Hearing Process." These proposed rules, amending 10 CFR Part 2, were issued for comment on June 3, 1981.

Very truly yours,

Ellyn R. Weiss

ERW/dmw
Enclosure

cc: Martin G. Malsh, Esq.

Acknowledged by card. 6/30/81. m.dv

L-H-1, Pt. 2

UNION OF CONCERNED SCIENTISTS' COMMENTS ON
PROPOSED RULES TO MODIFY THE NRC HEARING PROCESS

1. Intervention in NRC Proceeding

This most recent proposal in the series of proposed rules to "expedite" the NRC's licensing process is either a thinly-veiled attempt to curtail public participation or reflects a profound misunderstanding of the dynamics of the current licensing process. If adopted, it would impose an impossible burden on only one class of parties to NRC proceedings - the public - that would result de facto in leaving the public hearing process as an empty shell that holds out the false promise of a fair forum to resolve safety and environmental issues while it is in fact constructed to make that impossible.

In brief, Option A of the proposed rule would require, as a condition to admission as an intervenor, that a person (or group) plead each fact, along with supporting documents, which it will prove at the ultimate hearing. Assuming an intervenor pleads such facts in sufficient specificity to be admitted, the intervenor is not allowed without a special showing to establish other facts or cite other sources at the hearing. Remarkably, this requirement applies only to intervenors. Neither the Applicant nor NRC Staff are required to demonstrate the facts that they will rely on in response to the intervenor at any time.

Option B would go even further, by imposing the summary judgment standard at the contention drafting stage. That is,

based only upon the information submitted by the Intervenor, the Board, using its "technical knowledge to judge the merit of the contention," would reject it if the intervenor's submission failed to show that a "genuine issue of material fact exists."

We must begin by acknowledging several basic realities of NRC proceedings which are curiously ignored in this proposal:

1. At the time when intervention petitions must be filed the Staff has typically not even written or published the basic Staff review documents - the Safety Evaluation Report and the Final Environmental Impact Statement.

2. At the time intervention petitions must be filed, the Applicant's documents are undergoing substantial revision. It is not at all unusual for over 20 amendments to the Applicant's PSAR or FSAR to be filed before and through the hearings themselves.

The Commission's practice has long recognized that because of these realities and because of the inherent complexity of the factual issues in a licensing case and the very short time allowed potential intervenors to respond to notices of the opportunity for hearing, the public is simply not in a position at the outset to establish evidentiary facts. At least, the Commission recognized this prior to this proposed rule.

Indeed, it is the precise purpose of the discovery process to serve the function of notifying all parties as to the particular facts which the other parties will rely on. When the

Commission states in the explanation to this proposal that the amendment "would strengthen one of the purposes of the present rule, which is to give notice to the parties and the adjudicatory board of a would-be intervenor's concern," (p. 5) it largely confuses the purpose of discovery with the purpose of intervention petitions.

The description of the licensing process given in this notice totally ignores the discovery process and leaves the impression that no means exist by which the Staff and Applicant can learn the facts upon which intervenors rely. In fact, imposing a one-sided burden on intervenors to plead all of their evidentiary fa[illegible]er to be admitted to a proceeding cannot be justified on the basis of some asserted "need" to give notice to other parties of all such facts. This function is performed by the discovery process.

To the extent that the drafting of contentions fills a "notice" function, that is met by the current requirement that a contention must be stated with specificity and must contain a basis. Thus, when the Commission states in the explanation to the proposed rule that "the petitioner is under no obligation to demonstrate the existence of some factual support for a contention as a pre-condition to its acceptance," it is flat wrong. The requirements of 10 CFR 2.714(b) have consistently been interpreted by the AEC and NRC as requiring the showing of a basis in fact in order to

have a contention admitted.* It is a far different thing, however, to require an intervenor to plead and document all facts it intends to rely upon before a contention is admitted.

The procedure envisioned by the rule is fundamentally alien to the American system of jurisprudence and has no precedent that we have been able to locate. There is no kind of litigation where the parties are required to plead all of their facts in order to start a case. It is generally understood that many facts are not even learned until discovery.

This is particularly crucial in NRC proceedings, where applicants for licenses have the burden of proving that construction or operation of the facility is consistent with public health and safety. 10 CFR 2.732, Tennessee Valley Authority (Hartsville Nuclear Plant), ALAB-463, 7 NRC 341, 356, 360 (1980), Union Electric Co. (Callaway Plant) ALAB-348, 4 NRC 225, 227-31, 233. An intervenor may prove his case by cross-examination alone, and the gross disparity of resources between intervenors vis-a-vis the applicants and NRC make cross-examination a particularly crucial element of public hearings. The effect of this amendment, in requiring a potential intervenor to plead all facts prior to discovery, would be to functionally eliminate the right to prove a case by cro s-examination, since an intervenor would have no way at the beginning of a case to plead and document facts within

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* See, e.g. cases requiring a "factual basis" for admission of a contention pursuant to 10 CFR §2.714: Offsore Power Systems, LBP-77-48, 6 NRC 249, 251 (1977); Tennessee Valley Authority, LBP-76-10, 3 NRC 209, 212 (1976); Duquesne Light Co. et al ALAB-109, RAI-73-4, 243, 245 (1973). Nothing in more recent cases has changed the basic principle that a factual basis in support of a contention must be shown.

the knowledge of his adversaries. This raises a serious question as to whether the proposed rule is inconsistent with the NRC's rules on burden of proof, 10 CFR 2.732, or with the Federal Administrative Procedure Act, which provides that the proponent of an order, in this case an applicant, has the burden of proof in administrative proceedings (5 UCS §556(d)).

We also note the remarkable one-sidedness of the proposed rule. While imposing onerous burdens on the public, it imposes no equivalent burden on other parties. There is no requirement that the Staff or Licensee come forward at any time to state all the facts which they will rely upon to meet issues raised by the public. Indeed, we have found it difficult if not impossible in licensing cases to extract such information during discovery, particularly from the Staff.

Option B deserves additional comment. Beyond the burden established in Option A, Option B would require intervenors to meet a "phantom" summary disposition motion, without even requiring the applicant or staff to state the ground for the motion, or to establish the facts upon which they rely, as presently called for by 10 CFR 2.749. In shifting the burden of proof on a summary judgment motion, the NRC would be on very shaky grounds with regard to due process and standards of fundamental fairness.

Moreover by dispensing with the summary judgment procedure which requires the proponent of the rule to come forward with its facts and reasoning and having the Board invalidate contentions on the merits on its own initiative, based on its own general knowledge, the NRC would be denying intervenors notice as to the grounds on which their contentions were considered inadequate.

The extreme unfairness of this procedure can be seen by looking at the fifth provision: "A contention shall not be admitted if the facts asserted are legally insufficient to support the contention..." All facts which are unknown or unproven are presumed against the intervenor, and the intervenor is thrown out without being given prior warning of what additional facts are necessary to state a case. To do this prior to a hearing is grossly unfair. We consider it inconceivable that such a provision would be upheld by the courts. It designates the Licensing Board as an arm of the applicant rather than an unbiased tribunal.

This proposed rule is the pure antithesis of the recommendations of the Kemeny Commission and the NRC's own internal investigation in the aftermath of the TMI-2 accident. Both called for more public participation and called for NRC to assist the public by setting up offices charged only with that responsibility. These recommendations were not implemented by NRC. On the contrary, the agency is proposing steps which would skew an already unbalanced process even further against public participation. Nothing else will so surely and justifiably erode public confidence in the integrity of the license process than implementation of these rules.

It appears that this agency has determined that it need not be troubled by the issues of concern to the public and is moving with a vengeance back to "business as usual." Actually, it proposes to adopt rules even more restrictive of public participation than

were ever considered before the TMI-2 accident. This is a dangerous and self-defeating course.

2. Limit on Interrogatories

The suggestion of requiring leave of the presiding officer to serve more than 50 interrogatories on a party is counterproductive and ill-advised, both from the standpoint of fairness to parties and for the goal of efficient judicial management. The proposal cites action taken by some federal district courts but totally misconstrues the nature of that action by neglecting to look at how rules limiting the number of interrogatories work in practice and by losing track of the important distinction between simple and complex cases. No one seriously doubts the complexity of licensing proceedings which deal with all aspects of nuclear safety at a given plant in a given location. A limit of fifty interrogatories to be divided among engineers, security staff, architects, maintenance supervisors, etc., of a given company ("a party") is unreasonable. If the proceeding were concerned with a single auto accident by a plant employee, then the limit of fifty interrogatories would be sensible. It must be remembered that it is a routine to have 20-30 amendments to the applicant's documents and several amendments to the staff's, being filed throughout the process, including during the hearing itself.

In Crown Center Development Corp. v. Westinghouse, 82 F.R.D. 108 (1979) the judges of the Western District of Missouri issued an en banc opinion explaining the purpose and operation of their local rule placing a numerical limit on interrogatories to be served without leave of the court. The first thing to note is that the standard limit does not apply to

complex cases where discovery is regulated by special court order applicable solely to that case. 82 F.R.D. at 112. The reason for this exclusion is undoubtedly the court's realization of what federal courts have always understood: "As the degree of complexity of factual issues presented by a case increases, the permissible number of interrogatories to be submitted becomes greater." Kainz v. Anheauser-Busch, Inc., 15 F.R.D. 242, 248 (N.D. Ill. 1954). This is why the Advisory Committee Note to the 1948 amendment of Rule 33, F.R.Civ.P., stated that, "the number of or number of sets of interrogatories to be served may not be limited arbitrarily or as a general policy to any particular number, but that a limit may be fixed only as justice requires to avoid annoyance, expense, embarrassment or oppression in individual cases.

The Federal Rules of Civil Procedure do not prevent district courts from requiring leave of the court to serve more than twenty interrogatories. However, they do require district courts to use a very lenient standard for granting leave. In Crown Center, supra, the standard was stated as, whether "the interrogatories proposed are reasonably calculated to advance the orderly pretrial development of the pending case." Id. at 109. By contrast, the proposed rule contains a far more onerous standard which appears to be modeled on the qualified immunity standard of rule 26(b) for lawyer's work product. (i.e., "essential for a party to prepare adequately its case," and "not otherwise reasonably available.") To use this kind of standard in proceedings which will predictably require any more than fifty interrogatories of a licensee is to

impose exactly the kind of arbitrary limitations on discovery which the federal rules prohibit. Thus, it is disingenuous to claim that this rule is consistent with the practice in federal courts. It is not.

At best, the proposed rule would create needless delay and paperwork for the presiding officer by requiring him to read through and consider numerous interrogatory requests to determine whether they are "essential" and whether the intervenors has not "improvidently" used his allotted number of interrogatories. At worst, the inappropriate standard for granting leave will result in the denial of valid discovery requests. The current rules furnish a satisfactory mechanism for dealing with potential problems. A party can object and seek a protective order if and when unnecessary interrogatories are promulgated.

In Crown Center the court made clear that the local rule was not designed to have all requests for interrogatories above the specified limit come before the court. The parties are expected to meet, and the opposing party is supposed to consent if the additional interrogatories appear likely to advance discovery. The standard put forward in the proposed rule is an invitation not to consent, since it places some substantial burden on the party seeking discovery. The proposed rule change will predictably cause a large number of interrogatory requests, which would otherwise be noncontroversial, to become instances of litigation under this rule. It is inconceivable that this rule would make proceedings flow more smoothly.

3. Computation of Time and Service of Papers

The idea of accelerating proceedings by providing for express mail service is not inherently objectionable provided it does not become a pretext for imposing costs on intervenors who can ill afford them. We do, however, find it hard to believe that the 2 or 3 extra days for mailing papers first class is at all consequential. However, if NRC wishes to order parties to use express mail, it should provide that this be done on the motion of the applicant and at the applicant's expense. It is only reasonable that if the applicant believes that a 2 or 3 day time savings is essential, it be required to pay the costs of express mail delivery, which can be substantial. This will also prevent the rule being used as a technique for harassing intervenors.

Conclusion

In general, the proposed rules reflect a remarkable insensitivity to the role of public participation in NRC proceedings. UCS urges that they be rejected.

Respectfully submitted

Ellyn R. Weiss
HARMON & WEISS
1725 I Street, N.W.
Suite 506
Washington, D.C. 20006
(202) 833-9070

DATED: June 29, 1981

League of Women Voters of the United States 1730 M Street, NW, Washington, DC 20036 (202) 296-1770

DOCKET NUMBER
PROPOSED RULE PR-2 (28)
(46 FR 30349)

June 26, 1981

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

Attention: Docketing and Service Branch

Dear Sir:

Enclosed are the comments prepared by the League of Women Voters of the United States on the Nuclear Regulatory Commission's proposed rule of practice for domestic licensing proceedings, 10 CFR Part 2.

Sincerely,

Merilyn Reeves

Merilyn Reeves
Natural Resources Chair

Enclosure

Acknowledged by card 6/30/81 mdv

League of Women Voters of the United States • 1730 M Street, N.W., Washington, D.C. 20036 Tel. (202) 296-1770

COMMENTS ON THE PROPOSED RULE FOR DOMESTIC LICENSING PROCEEDINGS:
MODIFICATIONS TO THE NRC HEARING PROCESS
NUCLEAR REGULATORY COMMISSION 10 CRF PART 2

The League of Women Voters of the United States is a volunteer citizen education and political action organization with 1,400 Leagues in all fifty states, Puerto Rico, the U.S. Virgin Islands and the District of Columbia. One of the major goals of our organization is to promote informed citizen participation in public policy issues.

We believe that NRC's proposed rule limiting contentions and interrogatories in adjudicatory hearings will seriously curtail citizen participation in the licensing process for nuclear power plants. It completely ignores the complexity and time frame of the licensing process. It would require potential intervenors, as a precondition to having a contention admitted for hearing, to plead all the facts which the intervenor will rely upon at the hearing, including specific references to documents supporting each fact. Yet, at the time when intervention petitions must be filed, NRC staff has usually not completed the basic staff review documents--the Safety Evaluation Report and the Final Environmental Impact Statement. In addition, the utility's documents are still undergoing revision; it is not unusual for amendments to the documents to be filed just before and in the midst of the hearings themselves. Thus, the LWVUS believes that it is totally unreasonable to require the public to provide at the outset--when a petition for a hearing must be filed--all the facts they will use in the hearings themselves.

The League believes that this proposed rule is discriminatory and biased. Neither the utility nor the NRC staff are required to demonstrate the facts that they will rely on in the hearing process. Only the public--intervenors--must meet this new requirement.

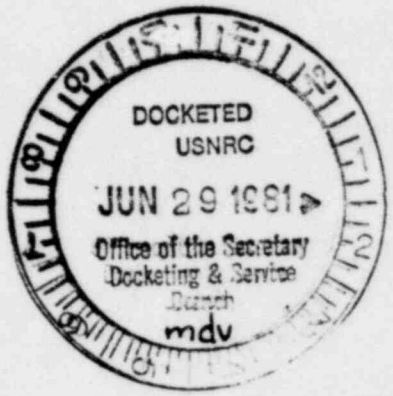
In addition, the proposed rule would prohibit a party from filing more than 50 interrogatories on any other party in the proceeding. Limiting interrogatories to 50 will sharply curtail citizen access to information and create yet another obstacle to any meaningful public participation in the licensing process. Because of the complexity of the factual issues in a licensing case, intervenors must often file more than 50 interrogatories on a party. Under the proposed rule, they will be required to ask permission of the licensing board to exceed this limit. The time it will take the licensing board to review these requests could eliminate any time savings and conceivably even lengthen the process.

While the LWVUS favors improving the efficiency of the licensing process, we do not believe that the proposed rule will make any significant contribution to this goal. More important, it could adversely affect the quality of the decision-making process. In the aftermath of TMI, both the Kemeny Commission and NRC's own internal investigatory team called for more public participation in the licensing process to insure full consideration of safety and environmental issues. The proposed rule would literally be taking a step backward and would further erode public confidence in the nuclear regulatory process.

The LWVUS urges that the proposed rule not be adopted.

6/26/81

PACIFIC LEGAL FOUNDATION



DOCKET NUMBER
PROPOSED RULE PR-2 (29)
(46 FR 30349)

June 29, 1981

Secretary of the Commission
United States Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20006

ATTENTION Docketing and Service Branch

Dear Sir:

Re: Proposed Rule to Amend 10 CFR Part 2

Enclosed for filing please find Pacific Legal Foundation's comments on the proposed amendments to the Rules of Practice for Domestic Licensing Proceedings. The proposed amendments were published at 46 Fed. Reg. 30349 (June 8, 1981).

Very truly yours,

Eileen B. White/sma

EILEEN B. WHITE
Attorney

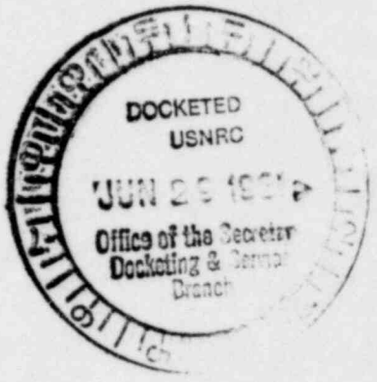
Acknowledged by card. 6/30/81. mdv.

1990 M Street, N.W., Suite 550 · Washington, D.C. 20036 · (202) 466-2686

California Office: 455 Capitol Mall, Suite 600 · Sacramento, CA 95814 · (916) 444-0154
Seattle Liaison Office: 5 Columbia Street · Seattle, WA 98104 · (206) 447-7264
Alaska Liaison Office: 444 W. 7th Avenue · Anchorage, AK 99501 · (907) 278-1731

A-44-1, Pt. 2

PACIFIC LEGAL FOUNDATION



COMMENTS OF PACIFIC LEGAL FOUNDATION
TO THE NUCLEAR REGULATORY COMMISSION
ON ITS PROPOSED AMENDMENT TO
10 C.F.R. Part 2

RONALD A. ZUMBRUN
RAYMOND M. MOMBOISSE
EILEEN B. WHITE
Pacific Legal Foundation
1990 M Street, N.W., Suite 550
Washington, D.C. 20036
Telephone (202) 466-2686

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INTEREST OF PACIFIC LEGAL FOUNDATION

Pacific Legal Foundation (PLF) submits the following comments on the Nuclear Regulatory Commission's (NRC) proposed amendments to 10 C.F.R. Part 2 (1979) to expedite its hearing process in adjudicatory proceedings.[1] PLF, a nonprofit public interest organization, believes that an ample and reliable supply of energy is essential to a healthy American society, the ingredients of which include a growing economy and the opportunity for all Americans to improve their lives through the social and economic mobility provided by economic growth. PLF is convinced that nuclear power is a key source of energy which can be used to help meet our needs. For this reason, PLF applauds NRC for its stated goal of expediting the resolution of nuclear plant licensing issues.

THE REGULATORY PROCESS MUST BE CHANGED TO INSURE THAT AMERICANS HAVE AN ADEQUATE ENERGY SUPPLY

In 1977, the 64 commercial light water reactors operating in the United States generated 250 million megawatt hours of electricity, an increase of 30% over the 1976 figure, and almost 12% of total United States electric production. Nuclear plants generate electricity at a lower cost than coal and

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[1] 46 Fed. Reg. 30349 (June 8, 1981).

oil plants, and thus produce major savings to consumers.[2] In addition, the power is derived from a strategically secure fuel source that is not subject to interruptions or rapidly soaring prices resulting from the policies of foreign countries.

Despite this performance, there have been more nuclear plant cancellations than new orders (nine) during the last three years, and a net reduction of 14 large plants on order since 1975. In addition, utilities have also slipped their schedules for plants under construction. In 1976 alone there was the equivalent of a one-year delay for 103 large units under construction.

A major reason for not ordering any new nuclear plants is the extremely long and unpredictable schedules that have been experienced in recent years in the licensing and construction of plants. For example, total licensing and construction time (from construction permit application to initial operation) has lengthened from an average of 51 months for all plants completed in 1970 to over 100 months for all plants completed in 1976. "A Study of Factors Inhibiting Effective Use of Domestic Nuclear Power" in Energy Perspectives 384 (M. Copulos ed. 1978). This delay is due to many factors, one of which is the regulatory process.

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[2] It has been estimated that nuclear plants saved consumers well over $1 billion each year in 1975, 1976, and 1977. Rosin and Rieck, "Economics of Nuclear Power" in Energy Perspectives 67 (M. Copulos ed. 1978).

The present regulatory process allows anyone whose interest may be affected by the licensing proceeding to petition to intervene and request a hearing by merely stating his contentions without providing information on the merits. Such interventions have been used as a forum to speak out against nuclear power and, in some cases, have forced postponement or cancellation of nuclear power plants, either by generating resistance in the region affected, or by delays that bring the economics of the plant into question. The regulatory process serves the function of guaranteeing that all proper points at issue are raised and judged. However, very little is accomplished if the same points are debated again and again. Therefore, NRC's attempt to discipline the review process will result in a focus on the true issues, and thus facilitate an expeditious decision regarding whether licenses should be granted.

THE PROPOSED AMENDMENTS GUARANTEE FAIRNESS TO ALL PARTIES WHILE PROVIDING FOR A SPEEDIER RESOLUTION OF ALL GENUINE ISSUES

The proposed amendments concern intervention, interrogatories, motions to compel discovery, and service of documents. All these proposals insure that interested parties are treated fairly, while at the same time providing that proceedings go forward expeditiously.

Specifically, the first amendment to Section 2.714 of Title 10, Code of Federal Regulations reasonably requires that an interested person include in his petition to intervene a concise statement of facts supporting each contention together with

references to the specific sources and documents relied on to establish those facts. PLF prefers NRC's alternative amendment to Section 2.714 which requires that: (1) the documents submitted in a petition must demonstrate genuine issues of material facts; (2) the facts asserted must be sufficient to state a prima facie case; and (3) issues of law shall not be admitted for hearing, but decided on the basis of briefs and/or oral argument in accordance with procedures to be established by the NRC's presiding officer. This requirement will not only give notice to the parties and the adjudicatory board of the would-be intervenor's concern, but will allow the Licensing Board (Board) to summarily dispose of those meritless contentions which only serve to delay the decision making process.

PLF also supports the amendment providing that the Board may respond orally to a motion to compel discovery, as long as the Board ensures that parties are promptly notified of the ruling. This amendment will expedite the hearing process.

PLF also supports the proposal to limit interrogatories to 50, as long as the Board has discretion to grant requests to file interrogatories exceeding the limit, and NRC staff continues to voluntarily make pertinent staff documents available to the public. This rule will alleviate strains placed on participants' resources.

Lastly, PLF supports the proposal requiring service of documents by express mail when the Board determines that expedition of the proceeding is especially important. PLF endorses the restriction that express mail may be used only to

serve those parties who are required to respond to the pleading being served. The alternative, of using first class mail and filing three days earlier, is a fair option to those who cannot afford to use express mail.

CONCLUSION

The delay in licensing of nuclear power plants is counterproductive to the public interest. Nuclear power provides one of the best solutions to one of the gravest problems facing America--namely, its great dependence on foreign sources of energy. NRC's proposed modifications to its hearing process will help to expedite the licensing process, thus allowing for the construction and operation of more nuclear power plants which will commence operations sooner.

DATED: June 29, 1981.

Respectfully submitted,

RONALD A. ZUMBRUN
RAYMOND M. MOMBOISSE
EILEEN B. WHITE
Pacific Legal Foundation
1990 M Street, N.W., Suite 550
Washington, D.C. 20036
Telephone: (202) 466-2686

By Eileen B. White
EILEEN B. WHITE

June 25, 1981

DOCKET NUMBER
PROPOSED RULE PR-2 (30)
(46 FR 30349)

Cindy Leerer
P.O. Box 4215
Portsmouth, New Hampshire
03801

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
ATTN: Docketing and Service Branch

To Whom it May Concern:

I am writing in opposition to the proposed changes in rules governing access of intervenors to the licensing of nuclear power plants.

The proposed changes in these rules would serve to restrict the access of public interest and citizen groups intervening in the licensing of nuclear power plants, while allowing free access by groups representing the nuclear industry and utility companies which stand to gain from the construction of these facilities. The resulting expedition of the licensing process could allow unsafe nuclear facilities, or nuclear plants lacking thorough environmental impact studies, to be constructed.

Under the present rules which allow the intervention of anti-nuclear groups, there have been numerous "incidents" involving nuclear power. An expedited licensing process will only serve to increase these accidents, and is not in the best interests of our country or our communities.

Sincerely,

Cindy Leerer

Acknowledged by card. 6/30/81 mdv

1-H-1, Pt. 2

COMMONWEALTH OF PENNSYLVANIA

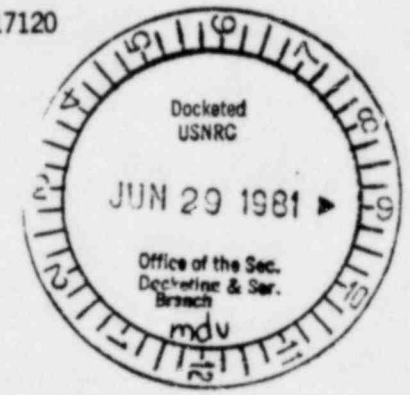
DEPARTMENT OF JUSTICE
OFFICE OF CONSUMER ADVOCATE
Fourteenth Floor
Strawberry Square
Harrisburg, Pennsylvania 17120

WALTER W. COHEN
Consumer Advocate

(717) 783-5048

DOCKET NUMBER
PROPOSED RULE PR-2 (31)
(46 FR 30349)

June 24, 1981



Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20055

Attention: Docketing and Service Branch

Re: 10 C.F.R. Part II, Rules of Practice For Domestic Licensing Proceedings; Modifications To The NRC Hearing Process

Dear Secretary Chilk:

Enclosed please find for filing Comments of the Pennsylvania Office of Consumer Advocate in the above-proposed rule-making.

Sincerely,

Martha W. Bush

Martha W. Bush
Assistant Consumer Advocate

Enclosure

MWB/aa

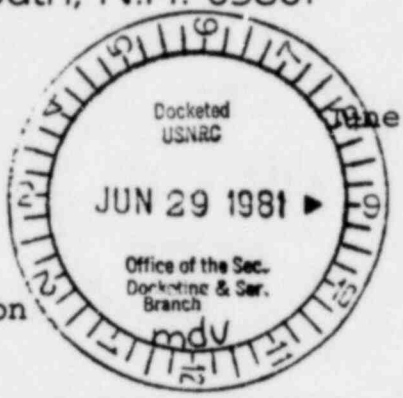
L-41, p1.2

Acknowledged by card. 6/30/81. mdv..

of relevancy, materiality, and burdensomeness. It is appropriate for the burden of objecting to answering interrgatories on these grounds to lie with the party to whom the question is directed. Creating a burden upon the questioner of affirmatively establishing the necessity of more than fifty interrogatories cannot be justified by lessening the strain on participants: it is a shifting of the burden. Particularly in highly technical proceedings such as operating and construction licensing proceedings before the NRC, the approach should be toward open discovery which ultimately saves hearing time and simplifies issues, not to restrictive discovery.

SAPL
Seacoast Anti-Pollution League
5 Market St., Portsmouth, N.H. 03801 (603) 431-5089

DOCKET NUMBER
PROPOSED RULE PR-2 (32)
(46 FR 30349)



June 23, 1981

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

Subject: Proposed Amendments to the Commissioners' Rules of Practice for Domestic Licensing Proceedings, 10 CFR Part 2

Dear Sirs:

I am writing to object to proposed modifications in the NRC hearing process for domestic licensing proceedings for nuclear reactors. The modifications as proposed would create a terribly inequitable situation. Citizen participation in the hearing process would be effectively curtailed if not eliminated by the burden imposed by the proposed requirement that intervenors set forth all the facts on which their contentions will be based, along with supporting documentation, as a condition of admission to a proceeding. If this requirement applied to the Applicant and the NRC Staff as well, there might be some semblance of fairness to this proposed change. As it stands, it appears to be a thinly-disguised effort to exclude groups such as SAPL from hearing processes.

At the time when intervention petitions must be filed, the NRC staff has commonly not yet written the basic Staff review documents - the Safety Evaluation Report and the Final Environmental Impact Statement. Furthermore, the Applicant is often still in the process of amending documents. How, then, can intervenors be expected to have all of the facts that they may want to plead? Does this proposed change not eliminate the right of the intervenor to prove a case by cross-examination?

Citizen groups often do not have the financial wherewithal to have full-time legal assistance, and to that extent they are disadvantaged already. To add other severe disadvantages, i.e. these proposed rule changes, is to completely weight the scales of justice against citizen intervenors.

1-4-1 pt. 2

Did the Kemeny Commission Report not recommend that the NRC establish an Office of Hearing Counsel to participate in formal hearings on construction permits to assure that vital safety issues are addressed

Acknowledged by card. 6/30/81. mdv.

and resolved? To my knowledge, this has not been done.

Let me warn you that limiting the chances for public participation through the addition of onerous requirements will serve only to destroy the little public confidence that yet remains in the regulatory process. The "public's interest" is better served by a thoroughgoing investigation of issues that can affect public health, safety and environmental quality. The "efficient resolution of nuclear plant licensing issues" that the Commission is so concerned about is not the public's primary concern. Increased efficiency is not an adequate grounds for a possible compromise of safety.

Most sincerely,

Jane Doughty

Jane Doughty
SAPL Field Director

New England Coalition on Nuclear Pollution, Inc.
Box 637, Brattleboro, Vermont 05301 Phone (802) 257-0336

DOCKET NUMBER
PROPOSED RULE PR-2 (33)
(46 FR 30349)

June 26, 1981

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

Attn: Docketing and Service Branch

Re: 10 CFR Part 2
Rules of Practice for Domestic Licensing Proceedings
Modifications to the NRC Hearing Process

Dear Sir:

These comments are submitted by the New England Coalition on Nuclear Pollution, Inc., a citizen group which has been an intervenor in operating license and construction permit proceedings of the AEC and NRC, since early 1971, for four New England nuclear power plant proposals.

We have seen firsthand and repeatedly the workings of an imperfect licensing process.

We have read with astonishment the referenced modifications proposed to "facilitate" and "expedite" the hearing process "without reducing its quality or fairness".

If the goal in nuclear power plant licensing proceedings is to delve thoroughly and as expeditiously as possible, given the gravity and complexity of the matters, into all relevant safety, economic, environmental, energy demand and energy source, and cost-benefit issues to determine whether or not a given nuclear power plant should be built or licensed to operate, and, by that process, to assure the public that no stone has been left unturned in examining those issues which will bear directly on their lives, their children's lives, and future generations, then the proposed "modifications" are ill-conceived and would be entirely counter-productive.

If, however, the goal is to license nuclear power plants as quickly as possible with as little effort as possible on the part of NRC staff and utility company, and with as little bothersome interference as possible from citizen intervenors who seek to examine issues thoroughly and, in fact, to oppose licensing for excellent and well-documented reasons, then that is quite another matter. The proposed "modifications" fit neatly with nuclear-promotion-

L-41, Pl. 2

and-the-public-take-the-hindmost.

"Efficient resolution of nuclear plant licensing issues" is scarcely able to serve the public interest when "resolution" does not mean that but rather means "convenient conclusion" for the careless nuclear prompters.

The New England Coalition hereby incorporates by reference the comments on the above referenced matter submitted by the Union of Concerned Scientists.

It is beyond us to see how increasing the burden of proof on an intervenor at an early stage in the process while requiring nothing comparable from staff or applicant, limiting interrogatories to an absurd fifty, and thereby showing insensitivity to genuine resolution of issues can be construed by the public as anything but a deliberate attempt to curtail public participation in the decisionmaking process, a dangerous and undesirable continuation of the wellknown mindset which brought us the nations worst nuclear accident - - - to date.

The New England Coalition urges that the proposed modifications be rejected .

Respectfully submitted,

Diana P. Sidebotham

Diana P. Sidebotham
President

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 26, 1981

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

Attn: Docketing and Service Branch

Re: State of Maine Comments on Proposed Modifications to the Nuclear Regulatory Commission Hearing Process

Dear Mr. Secretary:

The State of Maine, through the office of Attorney General, submits the following comments on the proposed modifications to the Nuclear Regulatory Commission (NRC) Hearing Process in accordance with the NRC's request for comments dated June 3, 1981.

The NRC has proposed several changes to the hearing process which can be summarized as follows: (1) a person wishing to intervene in an NRC licensing proceeding must state facts supporting each contention and the specific bases for each fact;[1/] (2) an intervenor may not file more than 50 interrogatories on another party; (3) NRC-appointed Boards can require oral responses by telephone to motions to compel discovery; and (4) licensing boards can require service of documents by express mail. The stated purpose of the proposed rules is to expedite the licensing of nuclear reactors.

The State of Maine is concerned that the adverse effects of the first two proposed changes, especially those requiring potential intervenors to state a prima facie case prior to admission as a party, far outweigh the potential gain of expediting the licensing of nuclear reactors. We believe a careful review of case histories

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1/ The NRC is actually proposing two alternatives to what information must be provided. In fact both alternatives require petitioners to make a prima facie case before admission as a party. The two alternatives will be treated as one for purposes of these comments.

would reveal very few, if any, instances in which the proposed changes would have made any significant difference in the time by which a nuclear reactor received an operating license. On the other hand, we are equally sure that the NRC, applicants and the public have benefited from issues raised after the contention stage, issues which were unknown to the intervenors until after discovery was in progress. We believe that adherence to existing rules is sufficient for prompt issuance of licenses.

What the NRC appears to be doing in proposing the new intervention rule is restricting the ability of persons willing and able to contribute to the hearing process by an over-broad rule which effectively limits all public participation.[2/] The NRC already requires petitioners for intervention to list the contentions to be litigated; the bases for each contention must be set forth with reasonable specificity. 10 CFR § 2.714(b). Thus, the Boards now have the authority, absent any regulatory changes, to prevent nuisance intervention without eliminating (or greatly reducing) the participation of parties who are beneficial to the licensing process.

The State of Maine further believes the proposed modification to the intervention rule unfairly penalizes potential intervenors because of the limited time available to intervenors once the proceeding notice is published in the Federal Register. The NRC is aware that its Staff normally has not even written such basic information as the Safety Evaluation Report (SER) and the Final Environmental Impact Statement (FEIS) by the time of the first prehearing conference. Combining that fact with a recognition that the applicant is constantly revising its application should lead the NRC to the conclusion that it is inherently unfair to require intervenors to make a prima facie case before admission as a party. Should the NRC adopt the proposed rule, it leaves itself open to a justifiable claim that the rule fails to satisfy the standards of due process.

Another troublesome result of limiting intervention to only those parties able to make a prima facie case is the effect on the parties' abilities to participate in discovery. There appears to us to be little question that the present licensing proceedings already favor the applicant and make it extremely difficult for intervenors to make a prima facie case prior to discovery. For

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2/ We suggest one alternative for the NRC's consideration would be to allow at least some persons to intervene as a matter of right; see e.g., Federal Rules of Civil Procedure, Rule 24(e) and intervention rules for other federal agencies.

example, the State of Maine has petitioned to intervene in a request by Maine Yankee to expand its spent fuel storage capacity by using a method never before approved by the NRC for a commerical facility. When the State asked to tour the Maine Yankee facility with one of its consultants, Maine Yankee refused permission. The result will be that the State will file a request with the ASLB for a view of the facility. However, the State cannot file such a request until after it has been allowed in as a party, and the proposed rule, if it were in effect now, might seriously jeopardize the State's ability to be admitted as a party.

It also should be pointed out that the NRC's desire to speed up licensing by limiting intervention only to those issues which a person must support prior to admission as a party is directly contrary to current practice and proper interpretation of the administrative process. Professor Davis makes the point very clearly: "The most important fact about pleadings in the administrative process is their unimportance. Agencies still use them, but only for notice purposes." 3 K. Davis, Administrative Law Treatise § 14.11 at 46 (1980).

Finally, we submit that it is imappropriate for the NRC to place a State in the same category as individuals and public interest groups for purposes of assessing the ability of intervenors to constructively participate in and contribute to a particular proceeding. This approach by the NRC ignores the unique role of the States in our system of federalism to represent the public interest of all citizens with the boundary of a state affected by a license or license amendment.

The State is also concerned about the NRC's proposals to limit discovery. By suggesting a limit to the number of interrogatories which may be filed by one party on another, the NRC again is proposing a rule far broader than necessary to try to resolve an apparent problem which can be adequately addressed by existing rules. Any party can object to interrogatories; see 10 CFR § 2.740(6). Legitimate objections can and should be upheld by the Boards. No new rule is necessary.3/

3/ We suggest also that the standards proposed for permitting more than 50 interrogatories is so vague as to offer virtually no guidance. On what realistic basis will a Board determine no more than 50 interrogatories should be allowed in a given case because the party was "improvident in its overall use of its first 50 interrogatories?"

At a time when more public participation is called for in NRC proceedings, it seems extremely unwise for the NRC to adopt the proposed modifications to its rules.

Respectfully submitted,

JAMES E. TIERNEY
Attorney General

By: _____
RUFUS BROWN
Deputy Attorney General

_____
PHILIP AHRENS
Assistant Attorney General

REB:mfe

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DAVID G. POWELL*
DAVID B. RASKIN
DONALD J. SILVERMAN

*ADM. KEN.

June 29, 1981

DOCKET NUMBER
PROPOSED RULE PR-2 (21)
(46 FR 30349)

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

Attn: Docketing and Service Branch

Dear Sirs:

This letter is submitted on behalf of Combustion Engineering, Florida Power and Light Company, Houston Lighting and Power Company, Iowa Electric Light and Power Company, and Puget Sound Power and Light Company in response to the notice of proposed rulemaking entitled, "Modifications to the NRC Hearing Process," published for comment by the NRC in the Federal Register June 8, 1981. (46 Fed. Reg. 30349-52)

We should like to compliment the Commission and NRC Staff for their efforts to reduce unnecessary delay in proceedings for the issuance of construction permits and operating licenses for nuclear power plants. However, although these efforts to date have been fruitful in focusing attention on the need for more effective management of licensing proceedings and for policy guidance to the NRC Staff and the Atomic Safety and Licensing Board Panel, much remains to be done. It is in this context, as a further step in the long process of NRC regulatory reform, that we submit these comments on the June 8, 1981 proposed amendment to 10 C.F.R. Part 2. Accordingly, our comments are not confined to the specific amendments proposed in the notice.

(1) Intervention in NRC Proceedings. The notice presents two options. Our strong preference is for Option B, although -- as a minimum reform -- we believe the Commission should adopt at least Option A.

1-41, pt.2

Acknowledged by card. 6/29/81 mdv

The requirement proposed in Option B, that a contention shall not be admitted if the documents "fail to demonstrate that there is a genuine issue of material fact to be heard" appears to us to be an obvious and necessary improvement. We find it difficult to postulate a rational justification for the fruitless delay and expense imposed upon the government and other parties by a practice which would condone the trial of contentions in the absence of a "genuine issue of material fact."

We agree with the provision as proposed in paragraph (b)(3) of Option B section 2.714 that, in making the decision, Boards "may use their technical knowledge to judge the merit of the contention," but we urge that the provision be modified to require that, in so doing, Boards exercise care that information so relied upon be officially noticed on the record in accordance with the provisions of section 2.743(i) (official notice).

Paragraphs (4) and (5) of proposed subsection 2.714(b) under Option B are meritorious and should be adopted by the Commission whether it elects to adopt either Option A or B as a whole, or neither.

(2) We support the proposed amendments regarding interrogatories to parties, motions to compel discovery, service of papers and computation of time.

There are a number of matters which have recently been considered by the Commission but which are not among those issues addressed in the proposed amendments or the effective amendments to 10 C.F.R. Part 2 which were also published in the Federal Register on June 8, 1981. Because we believe they are important and should be included among Commission amendments to its Rules of Practice, we briefly summarize them below.

(a) Role of the NRC Staff in Contested Licensing Proceedings. As reflected in the letter of April 7, 1981 commenting on proposed amendments to 10 C.F.R. Part 2 published for comment in the Federal Register of March 18, 1981, we urge that further consideration be given to the present practice which makes it incumbent upon the NRC Staff to prepare written testimony and to take positions on all controverted, and many uncontroverted issues. As we stated in the April 7, 1981 comments,

> The final environmental statement prepared in each proceeding by the NRC staff with respect to environmental considerations, and the safety evaluation reports prepared by the Staff with respect to nuclear safety considerations, should suffice as NRC testimony-in-chief. Further affirmative testimony by the NRC Staff should not routinely be submitted to the Atomic Safety and Licensing Boards. Of course, the Staff should be free in its discretion to present, and the Board should have the discretion in appropriate specific situations to request, the timely submission of written testimony by NRC Staff on specific matters where the Board believes that such testimony will provide significant assistance in the Board's consideration of the issues in question.

(b) We urge the Commission to give further consideration to the adoption of a model schedule. We recognize that no model schedule will be fully applicable to any specific contested licensing proceeding. Nevertheless, adoption of a model schedule will provide some additional guidance for Atomic Safety and Licensing Boards beyond mere hortatory language.

(c) We believe the Commission should reconsider its present practice which allows for other intervenors to cross-examine on another intervenor's contentions. Again, as we stated in the April 7 comments,

> The opportunity which Commission practice allows for other intervenors to cross-examine on a lead intervenor's contention is susceptible of gross abuse on the part of intervenors who had not originally framed a contention with respect to the specific matter. Either cross-examination on another intervenor's contention should be abolished or an intervenor who proposes to cross-examine with respect to another intervenor's contention should be required to file a plan of cross-examination with the Board which demonstrates that the additional cross-examination may contribute to a meaningful record.

(d) The Commission has adequately addressed TMI-related requirements, and provided sufficient guidance to the Staff and Licensing Boards to implement such requirements, that it should now restore 10 C.F.R. § 2.764 -- the immediate effectiveness rule -- as it was in effect prior to November, 1979.

The recent amendment to 10 C.F.R. § 2.764, (46 Fed. Reg. 28627) states that it was "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 on whether to permit the Licensing Board's decision to become effective." However, we believe that the amendment represents an unsatisfactory compromise which is so complex as to offer little hope that it will be effective to accomplish its stated purpose. Moreover, the amendment may itself become a source of controversy and litigation.

Implementation of the Commission's post-TMI requirements should be assured through the effective administration of the NRC's regulatory program, and not at the end of the licensing process by a delay in licensing after completion of Staff and Licensing Board reviews. Moreover, it should be noted that the process of initial power reactor start-up extends over a sufficient period of time (measured in months) after fuel loading that, in the unusual case where the Commission found it desirable, the Commission could initiate further review of any specific matter even after issuance of an effective full power operating license.

The amendment states that, with respect to both construction permits and operating licenses, "as a result of analyses still underway 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." Such changes, if any, should be considered by the Commission in generic rulemaking proceedings and not at the end of lengthy specific licensing proceedings.

Finally, we note that the amendment to § 2.764 applies to Licensing Board decisions on construction permit applications, although the title of the Federal Register notice is limited to "Commission Review Procedures for Power Reactor Operating Licenses." The reasons briefly summarized above

for restoring § 2.764 with respect to operating licenses are equally compelling with respect to Licensing Board decisions on construction permits. We urge that the Commission promptly reconsider these amendments and to restore the earlier text of § 2.764.

(e) The Commission should change its present policy by limiting Board review of matters not put in contention by the parties. In the alternative, as a minimum, the Commission should prohibit cross examination on issues raised by Licensing Boards sua sponte.

We believe that prompt adoption of measures along the lines discussed above can be a substantial aid in eliminating unnecessary delay in the hearing process. We are confident also that such measures can be adopted, without prejudice to either the rights of intervenors or the effectiveness of NRC's regulatory program.

We appreciate the opportunity to submit these comments.

Respectfully submitted,

Robert Lowenstein
Robert Lowenstein
by M.B

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Axelrad
Suite 1214
1025 Connecticut Avenue, NW
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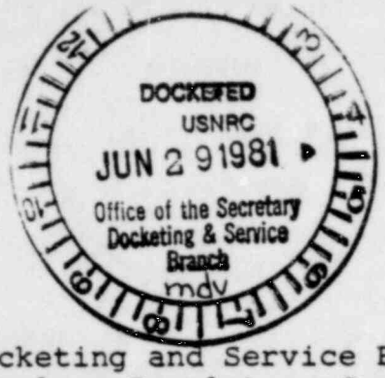

June 29, 1981

Sea Coast Anti-Pollution League (SAPL)
Portsmouth, New Hampshire

DOCKET NUMBER
PROPOSED RULE PR-2 (20)
(46 FR 30349)

Attn: The Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, D.C.

Subject: Comment on Proposed Rule Modifications to the NRC's Hearing Process-- Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b)

The Sea Coast Anti-Pollution League (SAPL) respectfully submits that the Commission erred in certifying that the proposed "... rule will not, if promulgated, have a significant economic impact on a substantial number of small entities" (page 12). On the contrary SAPL, like all the many other small, non-profit and independently owned and operated organizations would suffer substantial economic impact-- substantial enough to thoroughly cripple and exhaust us.

Reasons:

1) It would require an untold amount of money to set forth at the outset all the facts, sources or documents "intended" (page 3, line 15) to be used at a hearing. In short, any lawyer who has the uncanny ability to see into the future would surely require astronomical fees.

2) Small entities such as SAPL rely on the public for financial support. The public does not convene quarterly or yearly to allocate donations to us, hence, financial support does not flow into our coffers on a regular basis. Due to this already difficult situation it would be highly improbable that we intervenors could retain legal counsel to compile all the facts and sources needed for a case in the very short time allowed us to respond to notices of the opportunity for a hearing. We could not raise enough money in the limited time available.

3) Financial support from the public could easily cease altogether if the proposed rule changes go into effect because no sensible person would take the giant risk of giving money to a massive intervention effort that could be easily aborted by the NRC with a simple denial of the hearing request. Public support grows continuously and slowly as the chances for a hearing grows. It is only when the NRC approves a hearing request that the public feels inclined to give substantial support to the intervenor's efforts. It is only then, with an approval, that the contributor can be assured that his or her money will be of any significant use. Small organizations like SAPL will find it extremely difficult, if not impossible, to convince the public to support our work because of the risk of relying on the NRC's approval.

Acknowledged by card. 6/29/81 mdv

Summary:

The NRC's proposed amendments to its Rules of Practice to "facilitate expedited conduct" of its adjudicatory proceedings would more greatly prove to expedite the collapse of non-profit organizations like the Sea Coast Anti-Pollution League because of the rule's significant economic impact. Due to the reasons set forth above, we surmise that certification of The Regulatory Flexibility Act by the NRC is in error and on those grounds submit that the proposed rules cannot be legally adopted.

Respectfully submitted via the Critical Mass Energy Project on behalf of the president of SAPL, Anne Merck-Abeles.

anna gyorgy
Anna Gyorgy, Director
Caroline Petti
Caroline Petti, Office Manager

STONE & WEBSTER ENGINEERING CORPORATION

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June 25, 1981

Secretary of the Commission
Attention Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Sir:

DOCKET NUMBER
PROPOSED RULE PR-2 (19)
(46 FR 30349)

PROPOSED RULE
MODIFICATIONS TO THE NRC HEARING PROCESS
46FR30349
JUNE 8, 1981

We are pleased to submit our comments on the subject proposed rule, and believe that the contemplated amendments to 10CFR2 will facilitate expedited conduct of adjudicatory proceedings without reduction in quality or fairness.

Option B of the proposed change to Section 2.714 is a significant improvement over the regulations currently in effect and we support it. This option would satisfactorily serve the public's interest in efficient resolution of nuclear plant licensing proceedings without reducing the quality or fundamental fairness of the hearing process. In order to have timely and meaningful hearings, it is important that frivolous contentions not be entertained. Requiring that petitioners for intervention set forth the reasons and basis with supporting documentation for their contentions will help to eliminate any frivolous contentions which cause delay and confusion in the hearing process. We strongly favor the additional requirement that a contention shall not be admitted if examination of supporting documentation fails to demonstrate that there is a genuine issue of material fact. This increased threshold showing for a contention is necessary to allow more focus on those issues which have real merit.

With respect to proposed Section 2.730, Stone & Webster Engineering Corporation (S&W) has reservations about an answer given orally, unless it is followed-up in writing. Information communicated via telephone conference is subject to the allegation that what was spoken was misconstrued. Therefore, there should be provision for written follow-up.

S&W favors the remainder of the proposed rule changes to Sections 2.710, 2.712, 2.720, and 2.740b.

1-4-1, Pt. 2

Acknowledged by card. 6/29/81 mdv

We appreciate this opportunity to assist in the improvement of these regulations in order to expedite the hearing process, and hope that the above comments will aid you in the preparation of your final rule.

Very truly yours,

R B Bradbury

R. B. Bradbury
Chief Licensing Engineer

DJC:CM

environmental action
Suite 731 1346 Connecticut Ave. NW Washington, DC 20036 (202) 833-1845

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Branch

DOCKET NUMBER
PROPOSED RULE PR-2 (18)
(46 FR 30349)

June 26, 1981

Re: Proposed Rule to modify the NRC Hearing Process "to facilitate expedited conduct of /NRC/ adjudicatory proceedings"

Sir or Madam:

We disagree with the proposed rule to require potential intervenors to initially set forth the facts on which the contention is based and the sources or documents used or intended to be used to establish those facts.

The proposal so changes the hearing process as to violate its basic logic. The proposal requires, effectively, a full blown argument on the issues before a hearing will be granted. This proposal has the effect of reducing the already diminished credibility of NRC licensing hearings.

Frankly, this proposal appears to be intended to be just one more hurtle that concerned citizens must jump in raising questions about the need for and safety of particular reactors. As a hurtle, it directly contradicts the recommendations of the Kemeny Commission regarding lessons to be learned from Three Mile Island.

Environmental Action urges that the rule not be adopted.

In peace,

Richard J. Kinane
Legislative Representative

DOCKETED
USNRC
JUN 29 1981
Office of the Secretary
Docketing & Service
Branch
mdv

Acknowledged by card. 6/29/81 mdv

DOCKET NUMBER
PROPOSED RULE PR-2 (46 FR 30349) (11)

DOCKETED
USNRC
JUN 16 1981
Office of the Secretary
Docketing & Service
Branch

June 11, 1981

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

Sir:

As an Intervenor in the operating license proceeding for the Perry, Ohio plant (Docket Nos. 50-440 and 50-441), the Ohio Citizens for Responsible Energy ("OCRE") is vitally concerned with the rule proposed on or about June 2, 1981 regarding procedural changes in such proceedings. OCRE is greatly dismayed with the proposed rule.

OCRE's first point of dismay is with the limitation on the number of interrogatories to fifty (50). This is an invaluable discovery tool and is particularly useful to organizations such as OCRE that can in no way afford the pre-trial deposition of witnesses. While abuse has no doubt occurred, to statutorily limit this discovery to all proceedings a priori can easily vitiate this Intervenor's ability to obtain all the facts and clarify all the issues. The matter is best left with the individual Licensing Boards.

Secondly, the rule allowing summary disposition of motions* at anytime prior to the hearing will place an onerous burden and a well nigh impossible task of addressing any such disposition motions in a comprehensive manner upon this Intervenor. It is ludicrous for a Licensing Board to expect OCRE to contribute meaningfully in the hearing if served with such a motion the preceding week.

Without listing the potentially disastrous effects of the other technical steps taken in the rule, OCRE only expresses its complete dissatisfaction.

The nuclear industry has no room to lament of delay attributable to it. The driver of a car with a prototype engine can look only to himself and wait patiently until assistance arrives. The industry knew what it was piloting long before March 28, 1979. Now TMI has sent it back to the drawing board but it may not slice into the rights of citizens to protect their interests. This group of citizens will relinquish those rights most reluctantly.

OCRE further asserts that the Licensing Board, through 10 CFR sections 2.717, 2.718, already has the power to avoid delay by "regulat(ing) the course of the hearing and the conduct of the participants." The individual Boards are best able to exercise the discretion necessary for a

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* This writer has had access only to a June 3 AP article on the new rule. He assumes that by 'motion' it meant those issues or contentions raised by Intervenors.

"fair and impartial hearing according to law." 10 CFR sec. 2.718. To remove that discretion, which the new rule does, amounts to castration of this Intervenor's ability to contribute meaningfully, let alone protect its interests.

OCRE hopes that further discussion on and a much-needed re-examination of this rule follow.

Respectfully,

Jeff Alexander

Jeff Alexander
OCRE Representative
929 Wilmington Ave. #H
Dayton, OH 45420

Potomac Alliance

DOCKET NUMBER
PROPOSED RULE PR-2 (9)
(46 FR 30349)

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

Fred Millar
Potomac Alliance
1743 Q Street, N.W.
Washington, D.C. 20009
(202) 232-3149

Dear Mr. Chilk:

Having been an intervenor in one of your proceedings, and having read the proposed NRC modifications of rules for license proceedings as well as the UCS critique of same, let me say that I wholeheartedly agree with the latter's analysis of the unfortunate impact such modifications would have. Is not even the appearance of fairness in your proceedings a valued commodity these days at the NRC?

Good grief!

Sincerely,

Fred Millar

Fred Millar

Acknowledged by card. 6/24/81 mdv

A-44 Pt. 2

DOCKET NUMBER PR-2 (10)
PROPOSED RULE (46 FR 30349)

June 17, 1981

To: Martin G. Malsch, Esq., Deputy General Counsel, U. S. Nuclear Regulatory Commission, Washington D. C. 20555.

From: Dr. John F. Doherty, Intervenor in the Allens Creek construction license proceedings with regard to proposed changes in 10 CFR 2, as promulgated by the Commission's Secretary on June 3, 1981.

Note: Collectively the modifications would alter the NRC hearing process in several ways. Comments are below.

Additional Change "1", "Intervention in NRC Proceedings"

There is no real difference here between the summary judgement rules and the proposal so this should be eliminated. The Alabama Power (Joseph M. Farley Nuclear Plant, Units 1 and 2, ALAB-1.2, 7 AEC 210, 1974), requires a "basis" for a contention. All that would be accomplished by the proposed rule would be to make it easier for Staff and Applicants to decide which contentions of an Intervenor to file summary judgement on. If the summary judgement motion failed, Staff or Applicant's main argument would not be wasted because it could be used in the hearing. In addition, through general interrogatories this information can be obtained from the Intervenor thus eliminating surprise.

The Intervenor in Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1, ALAB-590, 11 NRC 542, (1980) was eliminated by summary judgement incidently which illustrates the adequacy of the current rules. ALAB-590 said no factual support was needed at the contention stage, but that didn't open the door to wide speculation. "Basis" as has been practiced has meant some opinion or rational sensibleness is required for the contention to survive at threshold. To require facts of Intervenors who typically are limited in time and resource gathering ability at the start of a construction licensing risks loss of issues valuable to a proper determination because cross examination may prove the only way an Intervenor can show Applicant or Staff have not overcome their respective burdens.

The proposed Sec. 2.714 (3) would be unwise prescedent setting up a "Three Wisepersons" scenario. It would essentially require the Intervenors file their whole case at the start

Acknowledged by card. 6/24/81. mdv.

when they would be likely but embryonic. Further, such a rule would not doubt result in further delay (the problem it was supposed to cure) because Intervenors would justifiably refile such contentions when they had established better bases.

Additional Change "2" "Limit on Interrogatories"

This is unnecessary and unlikely to aid any aspect of licensing. Proper and sensible time durations for discovery are the proper method of control. Staff can save time in the hearings by good answers to Intervenor interrogatories in my experience. Unfortunately the Applicant in the Allens Creek proceeding was generally evasive in reply to interrogatories such that resort to Motions to Compel was needed* So my experience is that this limitation would be just one more advantage the Applicant (and Staff) would have over the public.

When Staff makes documents available in Washington to Intervenors in Houston (let us say) the documents while legally available are of course unavailable. Documents should not be said to be legally available unless present somewhere in the place where an Intervenor by residence has standing to intervene. This is an example of legal sufficiency being outside of real world sanity.

But, that aside, the Boards can handle this problem without resort to what is a minority procedure in the Federal District Courts. These restrictions should be remedies and not rules.

Additional Change "3" "Motions to Compel Discovery"

Conference calls are very expensive and hence not practical for Intervening parties. Their use should not be established as a way of coercing (through expense) an Intervenor into answering Interrogatories. In my experience as an Intervenor, Appli-

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* One method was to give the location in a document where the answer could be found instead of giving the answer which in some cases was a mere number. Another was to to interpret the question in such a way that an answer relevant to the contention was not given.

cant had considerable financial resources and relied mainly on oral deposition, while Staff filed written interogatories (very few), in the Allens Creek construction permit proceedings.

The Proposed Section 2.712, paragraph (c).

As stands, this is agreeable. However, the last sentance should have the words: "... to Parties who must reply." appended to follow the text given in the filing as to extent.

These four comments thus show no changes are required in 10 CFR 2. Indeed, the proposals may have the reverse of their intentions. The Commission rules appear adequate to permit control of abuse without further rules, because the rules do grant Boards some flexibility. I suspect Staff and Applicant may become peeved from time to time, but where the proceedings are typically one-sided, further erosion of Intervenor capabilities whould make the proceedings useless to the public. If that is anyone's desire than a frontal assault on the public's right should be tried, instead of setting up deceptive rules which give the public no practical way to protect its interests.

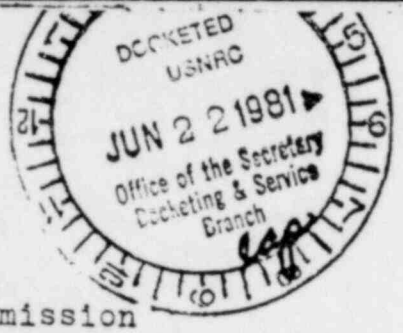
Thank you for this opportunity.

Sincerely,

John F. Doherty, J.D.

John F. Doherty, J. D.

4327 Alconbury
Houston, Tx. 77021



DOCKET NUMBER
PROD. & UTIL. FAC. 50-361, 362
DOCKET NUMBER
PROPOSED RULE PR-2 (6)
(46FR30349)

Oceanside, Ca.
June 15, 1981

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

Re: amendments to NRC licensing regulations (Ca. San Onofre plants)

Sirs:

The NRC has asked that the public send comments on the amendments effective June 8th.

If floods of letters were to appear from the public, what purpose would be served? Would the decision of the commission be influenced?

Whom can we trust with our lives, our futures, our well-being? This is a democratic form of government. The NRC has been created to do a job. They are assigned the responsibility to license nuclear plants only if the known safety requirements are complied with. A grave burden.

Since construction of Units 2 and 3, reams of material are at the disposal of the commission to facilitate their decision-making process-new findings, new studies, new hazards. Why is the latitude of negative input being squeezed? It should be accepted and used for the survival of millions-human beings, not dollars. Instead, it is being tossed aside as "irrelevent" or "inappropriate".

The simulated "nuclear accident" evacuation on May 12 was a sham-a Mickey Mouse episode-a child-like attempt to get approval for these plants. A nuclear accident will be enough to deal with in such a populated area, but to visualize an accident in the aftermath of an earthquake-there will be no escape. There will be pandemonium followed by silence and death-a holocaust caused by irresponsible decisions.

Must the U.S. continue to be the laughing-stock of the world? Must we destroy ourselves for the cause of "energy"? Are there no heroes left who have pride in a job well done, with future generations in mind, to be recorded in the history books?

I am a retired, 60-year old widow, who came to California to enjoy "the golden years", but isn't it sad about the young folks, who are busy with their jobs and their children-they won't feel a need to respond. If these plants are approved, you will have failed them.

A complacent victim,

Gertrude Szakowski

L-4-1, pl.2

Acknowledged by card. 6/23/81. mdv.

BLACK & VEATCH
CONSULTING ENGINEERS

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KANSAS CITY, MISSOURI 64114

June 12, 1981

Comment to Proposed Changes to
the Commission's Rules of Practice

DOCKET NUMBER
PROPOSED RULE PR-2 (3)
(46 FR 30349)

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

Attention: Docketing and Service Branch

Gentlemen:

By letter dated June 3, 1981, the Commission requested public comment on proposed changes to the Commission's Rules of Practice. The letter stated, by Option A, certain changes to §2.714 paragraph (b) and by Option B, revisions to §2.714 paragraph (b), §2.710, §2.712 paragraph (c), §2.720 paragraph (h); also added §2.730 paragraph (h) and §2.740b paragraph (c).

We wish to advise the Commission of our support to Option B in its entirety. We believe these changes will expedite the hearing process without reducing its quality or fairness. We share the Commissions concern that the present intervention process is not satisfactorily serving the public's interest in efficient resolution of nuclear plant licensing issues and welcome the Commission efforts to alleviate this concern.

Very truly yours,

BLACK & VEATCH

E. L. Cox

E. L. Cox
Director of Nuclear Licensing

cmg

L-4-1, Pt. 2

Acknowledged by card 6/18/81 mdv

State of Ohio
Office of the Attorney General

William J. Brown
Attorney General

DOCKET NUMBER
PROPOSED RULE PR-2 (7)
(46 FR 30349)

Bruce J. Rakay
First Assistant Attorney General
David P. Hiller
Chief Counsel
Henry E. Helling, III
Executive Assistant Attorney General
G. Duane Welsh
Deputy Attorney General

June 19, 1981

Secretary of the Commission
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Modifications to NRC Hearing Process
10 CFR Part 2

Dear Sir:

Enclosed please find ten copies of a letter in the above-referenced case. Please file this letter with the Commission and returned a time-stamped copy to this Office in the envelope provided.

Sincerely yours,

E. Dennis Muchnicki
Assistant Attorney General

EDM:mc
Enclosures

Acknowledged by card. 6/23/81 mdv

L-4-1, pt. 2

State of Ohio
Office of the Attorney General

William J. Brown
Attorney General

Bruce J. Rakay
First Assistant Attorney General
David P. Hiller
Chief Counsel
Henry E. Helling, III
Executive Assistant Attorney General
G. Duane Welsh
Deputy Attorney General

June 19, 1981

Secretary of the Commission
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Modifications to NRC Hearing Process
10 CFR Part 2

Dear Sir:

The Office of the Attorney General of the State of Ohio wishes to make the following comments on the Commission's proposed modifications to its procedural rules for the issuance of nuclear power plants licenses. This Office finds the Commission's proposed rule change to require greater specificity in petitions for intervention to be unconscionable. While the Commission attempts to justify the proposed rule change by claiming that it will lead to more efficient licensing, the real thrust of the amendment is patently clear. The amendment will create an almost insuperable barrier to intervention by most members of the public. Few members of the public have the resources to prepare such detailed intervention petitions prior to even being allowed to participate in the proceeding. To prepare such detailed statements as is required under the proposed rule, an intervenor would almost certainly have to employ technical assistance before knowing whether they will be granted intervention. Since many intervenors have extremely low budgets, it is unlikely that they will have retained experts prior to knowing whether or not they will be allowed to participate in the proceedings. Effectively, this amendment shuts down the NRC licensing process to the public. While the proposal may be expedient, it is unwise. The price to be paid for such a proposal will be a continuing distrust and suspicion of the Nuclear Regulatory Commission because the Commission will be further perceived as a protector of the nuclear industry rather than a regulator of that industry.

With regard to the proposed rule change which will limit the number of interrogatories to fifty, this Office must note that the Commission provides no justification for selecting fifty as the amount of interrogatories to which parties will be limited. Why not seventy-five? Or sixty-three? Due to the widely varying nature of many proceedings before the Commission, it is hard to see any basis for concluding that any specific number will always prove to be adequate. Furthermore, the "good cause" standard for allowing additional interrogatories to be served is vague and is essentially a matter of discretion left to the hearing officer. This fails to provide the participants in NRC proceedings with assurance that they will be able to conduct sufficient discovery.

In summation, this Office finds the two proposed rule changes referenced in this letter to be a major step backward for the Commission, and this Office must express its disappointment in the manner in which the Commission intends to fulfill its duties to the public.

Sincerely yours,

E. Dennis Muchnicki

E. Dennis Muchnicki
Assistant Attorney General

EDM:mc

NEW YORK STATE COMMITTEE FOR
JOBS AND ENERGY INDEPENDENCE

Chairman
Peter J. Brennan

Executive Director
Dr. Thomas J. Ward

DOCKET NUMBER
PROPOSED RULE PR-2 (8)
(46 FR 30349)

June 17, 1981

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D. C. 20555

Dear Mr. Chilk:

On behalf of the New York State Committee for Jobs and Energy Independence, I write in support of the proposed amendments to the Rules of Practice of the Nuclear Regulatory Commission (10 CFR Part 2).

In proposing these amendments, the NRC reaffirms the "test of reasonableness," which requires the rulemaking process as well as a set of rules to be reasonable in light of circumstances. Certainly, it seems that this test has not been applied in recent years as numerous intervenors introduced frivoluous arguments to forestall NRC decisions. These delaying and obstructionist strategies were obviously not in the public interest and resulted in adjudicatory proceedings in which intervenor motions were introduced which were well beyond the scope of authority of the hearing boards.

The proposed amendments would safeguard against the introduction of frivolous and irrelevant contentions by requiring intervenors to provide initial factual support for their contentions. Surely, intervenors feeling they were aggrieved by an unfavorable decision of the hearing board at this stage can, as I understand it, still seek judicial review to determine if the NRC acted ultra vires, evaluated the evidence reasonably and executed procedural rules in a fair manner. However, theoretically, courts will only act if it is determined the hearing board acted outside of or abused its authority. This process is fair, rational and assures that "reasonable" decisions of the NRC will not be overturned in the courts; yet, it provides a means of redress for those whose contentions did not receive reasonable evaluation on their merits.

Ltr 1, Pt. 2

Acknowledged by card. 6/23/81 mdv

Suite 1502 • 211 East 43rd Street, New York, N. Y. 10017 • (212) 986-1188

The New York State Committee for Jobs and Energy Independence is a non-profit, labor/business coalition founded in 1976 to foster rational energy policies for New York and the nation. Our membership strongly encourages the adoption of these amendments because these meet due process standards, truly serve the best interests of the American people, and will enable the NRC to effectuate its role in our government process. Consequently, we call for the adoption of these amendments as quickly as practicable.

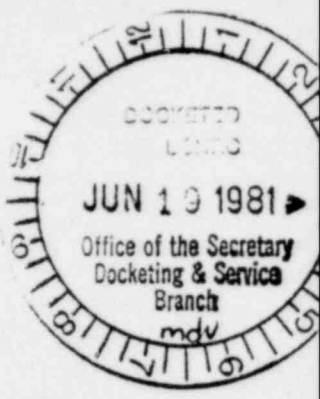
Sincerely,

Peter J. Brennan
Chairman

PJB:ce

DOCKET NUMBER
PROPOSED RULE PR-2 (4)
(46 FR 30349)

Route 1 Box 183
Durham NC 27705
11 June 1981



Samuel J Chilk
Secretary URS NRC
Attn Docketing & Service Branch
Washington DC 20555

Comments by Wells Eddleman pro se and on behalf of Kudzu Alliance re proposed rules labeled (7590-01).

Proposed changes 1 and 2, in all options, are very unfair to intervenors. Change 3 looks OK provided all parties have to be included in the conference call or calls. To the extent that the use of express mail (item 4) is required, the Applicant or the NRC should bear the additional cost. Otherwise the rule impacts the time and resource of the intervenors with no shown benefits to them or to the public interest. Clearly it is not in the public interest to raise utility rates, which is what quicker licensing of nuclear plants does even when the rush to licensing does not overlook any safety issues, in general.

The effect of proposed changes 1 and 2 is to put the burden of proof on the intervenors before they even start the proceedings, and to limit their access to information through the limit on interrogatories. This is manifestly unfair and should be rejected for the same reasons the Commission has rejected the proposal to exempt the NRC Staff from discovery against them.

The basic unfairness of these proposed rules is that the Applicant and Staff have essentially unlimited time to communicate between each other, unlimited time to ask for and obtain information, to work out the issues between them to their satisfaction before the NRC hearing process on a license begins. They can establish facts and conduct studies with no time limits. There is no restriction in the NRC rules on how long they can take to do this or how many questions they may ask each other.

But the intervenors do not know what the NRC Staff and the nuclear Applicant to run or build a nuclear plant have established between them until the case is docketed for hearing. Then, the intervenors have 30 days to give their reasons to intervene. To add to this that they should, in effect, have worked out a full case with references and data to support in detail every aspect of their contentions is first to put the burden of proof on the intervenors, contrary to law; second, to require them to meet this burden of proof before the hearing, whereas the Applicants and Staff need meet no burden of proof until the hearing commences; and third, to require the intervenors to do in a very limited time what the applicant and NRC staff have years to do, if they want to take that much time, i.e. to make the case for their contentions. Moreover, the intervenors must do this with a limited number of interrogatories. You know very well that nuclear utilities are not at all forthcoming with facts that might cause people to question their safety, need for power, evacuation plants, siting and so forth. To require the intervenors to find out such facts from an unwilling source with a limited number of interrogato-ries is unfair and prejudicial to the full hearing required and to finding all the facts.

Acknowledged by card. 6/19/81 ...(continued on back)

L-4 pl.2

What the NRC is proposing is to require the intervenors to pile up facts in order to bear a burden of proof that is not their to bear, without letting them ask the questions (interrogatories) that will reveal those facts. This is absurd. The purpose of hearings is to assure safety and proper resolution of the questions before the Board. It is not to license plants rapidly for the financial convenience of the Applicant.

It is interesting to note that all these rules to speed up plant licensing came about because the NRC Staff does not have the time and resources to do all the work needed to get a license hearing done, before certain plants are finished (if they are indeed finished -- see below). If the NRC Staff hasn't got the time and personnel to do their job, why should the intervenors then be foreed to bear the burden of proof, with their generally even more limited resources.

Let us re-emphasize that the Applicant bears the burden of proof. The Intervenors are not required to prove a case (at least not according to the law) but simply to raise questions of fact which the Applicant must then prove its case on. It is difficult to believe that anyone familiar with administrative and judicial proceedings could not see that the effect of proposed rules 1 and 2 in this group is to place the burden of proof on the intervenors, and to give them far less time to meet this burden, and to further limit their ability to gain information to meet this burden, which is not theirs to bear. The NRC should reject such rules as these proposed (7590-01 #1 and #2) out of hand for these reasons.

A parenthetical note on rushed licensing: We are familiar with the McGuire Nuclear Stafion case (50-369/370) in which a limited power license has just issued. At the same time, the existence of some 31 defective valves in the plant has been revealed, and the NRC Rgion II people are quoted as praising the Applicant in this McGuire case for fixing (in eight hours) a steam bubble condition in the primary coolant. It should be noted that Duke Power, the Applicant, created this problem, and that it occurred at a very low power level (presumably zero power in terms of raising steam in the steam generators). The real question is why it took eight hours to resolve this problem. And why does the NRC insist on rushing licenses when problems like these valves and this steam bubble pop up under your very noses in the middle of the licensing process? This is how you got Three Mile Island. Please be careful, for your sake and ours and many others', that you don't make the same mistake in a new way. Safety and rushed proceedings are inconsistent.

WEGMAN, HESSLER & VANDERBURG
A LEGAL PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

MARTIN J. WEGMAN (1918-1977)
DAVID J. HESSLER
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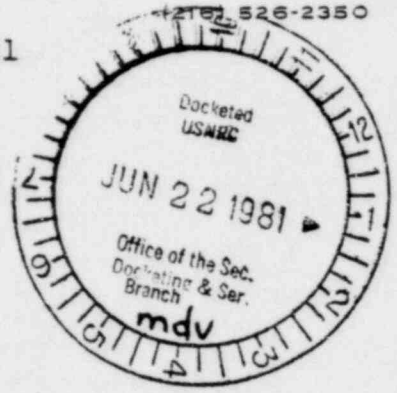
DOCKET NUMBER
PROPOSED RULE PR-2 (5)
(46 FR 30349)

June 17, 1981



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

ATTENTION: Docketing and Service Branch

Gentlemen:

I would like to comment on the proposed rule relating to modifications to the NRC hearing process.

The first comment deals with changes to 10 CFR 2.714 pertaining to intervention in NRC proceedings. The modification in the rule, Option A, would require that an intervenor within 15 days of the holding of a special pre-hearing conference or if no special pre-hearing conference is held within 15 days prior to the first pre-hearing conference file a supplement which sets forth a concise statement of the facts supporting each contention together with references to the specific sources and documents and portions thereof which have been or will be relied upon to establish such facts. This approach is manifestly unfair to intervenors and should not be adopted for the following reasons.

Intervention permits public participation in NRC proceedings and is to be encouraged. Virginia Electric & Power Co. (North Hanna Power Station, Units 1 and 2), ALAB-256, 1 NRC 10 (1975). The first notice that the public has concerning an NRC licensing proceeding is in the Federal Register. The public then is usually granted 30 days to file Petitions for Leave to Intervene. Within a short period of time after that, a pre-hearing or special pre-hearing conference is held at which time the public is supposed to have factual basis for its contentions. This quite obviously works against the public in the intervening process and is a violation of due process of law.

It is manifestly unfair to expect the public to review and analyze the final safety analysis reports filed by applicants which can run up to 19 volumes within a sixty-day period. The NRC staff is given up to a year to review these documents. To even suggest that the public, which lacks the resources that the NRC staff has and the applicant has, must essentially prove its case at the time of a special pre-hearing conference effectively disintegrates the public's right to participation and is a violation of due process of law.

In order to permit adequate public participation in NRC proceedings, the public must be given the same amount of time to prepare itself, its contentions and its authorities that the NRC staff has and that the applicant has. Since the public is expected to pay for these plants and live next to these plants, the public has an absolute right to be involved in all procedures which lead up to the construction and operation of these plants. It is not public participation that has caused an increase in the cost of building and operating nuclear plants. It is not public participation which caused the Browns Ferry fire; it was not public participation which caused Three Mile Island. The time involved and cost of public participation is minimal compared to the cost of operating a nuclear plant and cleaning up after an accident at a nuclear plant.

The proposed rule clearly violates the United States Constitution and should not be adopted.

The proposed changes to 10 CFR 2.740B are well taken. It is manifestly unfair for utility companies to file thousands upon thousands of interrogatories which really serve no useful purpose and drain the resources of intervenors. To require that no more than fifty interrogatories be filed except with permission of the Licensing Board I think is just and equitable and the rules should be adopted.

Thank you for the opportunity of commenting on these changes in the rules of practice.

Very truly yours,

WEGMAN, HESSLER & VANDERBURG

Daniel D. Wilt

DDW*md

cc: Amy Hubbard
Terry Lodge, Esq.