

# UNION OF CONCERNED SCIENTISTS

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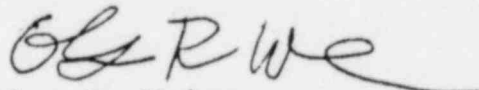
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**(47 FR 24044)**

Chairman, Regulatory Reform  
Task Force  
United States Nuclear Regulatory  
Commission  
Washington, DC 20555

Dear Sir:

Enclosed are the Union of Concerned Scientists' comments on the proposed "Nuclear Standardization Act of 1982".

Sincerely,



Ellyn R. Weiss  
General Counsel

Enclosures

Acknowledged by card...7/19/82...mdv

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COMMENTS BY THE UNION OF CONCERNED SCIENTISTS ON  
THE PROPOSED NUCLEAR STANDARDIZATION ACT OF 1982

These comments on the Nuclear Regulatory Commission's proposed "Nuclear Standardization Act of 1982" are submitted by the Union of Concerned Scientists in response to the notice and solicitation at 47 Fed. Reg. 24044 (June 2, 1982).

Introduction

The latest episode in the continuing campaign to curtail public participation in nuclear power decision-making is the Nuclear Regulatory Commission's proposed Nuclear Standardization Act of 1982. On June 2, 1982, NRC published the proposed Act for public comment, 47 Fed. Reg. 24044, prior to submitting it for congressional consideration. These comments are in response to that solicitation.

The proposed bill provides for issuance of combined construction permits and operating licenses (§101); early approval of sites (§102); early approval of standardized plant designs (§103); and stability of standardized designs (§104). The most significant real changes worked by the legislation would be the gutting of the fundamental rights to public hearings provided in the present Atomic Energy Act and the promulgation of a standard making it extremely difficult to order safety improvements in designs. For that reason, these comments are divided into three parts: one dealing with changes to the hearing process, one dealing with the design-change standards, and one dealing with all other issues raised by the proposed Act.

## I. Hearing Format

The most serious problem with the proposed legislation is its backdoor but draconian attack on the hearing process. The summary paragraph at the beginning of the NRC's notice states:

The Nuclear Regulatory Commission proposes to submit the "Nuclear Standardization Act of 1982" to Congress for legislative consideration. The proposal provides for design approval and stability of design for standardized nuclear power plants, one-step licensing, and early site approval.

The fact that the bill would effect a wholesale amendment of the fundamental rights to hearing provided in section 189(a) of the Atomic Energy Act is not even mentioned, yet that is clearly one of the most significant real changes in the proposed bill. As Commissioner Gilinsky notes in his separate views, the bill is mistitled: "If the hearing requirements of the Atomic Energy Act are to be revised, it should be as part of a systematic review of the hearing process rather than as a back-stairs effort to dismantle the hearing process." The summary is transparently deceptive and reflects the same effort to disguise the true effect of the proposal by masquerading it behind the banner of standardization.

Sections 101, 102, and 103 of the proposed bill would amend section 185 and add new sections 193 and 194, respectively, to the Atomic Energy Act of 1954. In each case, the hearing requirement of section 189(a) of the present Act would be supplanted by new provisions calling only for "opportunity

for public hearing", without specifying the format of the hearing. The intent of the change is to leave the format of any hearings held to the discretion of the Commission.

Section 189(a) of the present Atomic Energy Act provides, in pertinent part:

(a) In any proceeding under this chapter, for the granting, revoking or amending of any license or construction permit . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 183 or 184(b) for a construction permit for a facility . . . .

This language is the linchpin of public access to the process of licensing nuclear facilities. It has consistently been interpreted by the Commission to require adjudicatory hearings.

Under the proposed bill, new subsection 185(c) of the AEA would read, in part:

(c) Notwithstanding any other provision of this section, the Commission shall issue to the applicant a combined construction permit and operating license for a standardized nuclear power plant after providing an opportunity for public hearing, if the application contains sufficient information to support the issuance of both a construction permit and operating license in accordance with the rules and regulations of the Commission . . . .

In the Commission's background statement accompanying the bill it is explained that this "opportunity" for public hearing was inserted to assure "flexibility" of the hearing process. The need for this, according to the statement, arises because of "confusion" surrounding the "uncertain"

meaning of section 189(a) of the AEA. 47 Fed. Reg. 24046. Under the proposed bill, for site permits (§193), standardized design approvals (§194), and combined construction permit/operating licenses (§185(c)), compliance with the hearing requirement of section 189(a) is not to be required. Thus the public would have no right to a hearing in any of these cases. Whether a hearing would be provided, and the format and rights, if any, of intervenors in that hearing, would be at the complete discretion of the Commission.

As noted by Commissioners Ahcarne and Gilinsky and Task Force members Crane and Wenner in their respective "separate views" accompanying the proposed bill, section 189(a) has been consistently interpreted by the Commission over nearly three decades to require adjudicatory hearings. The assertion in the background statement that changes in the hearing process are needed to avoid unfavorable consequences which could result from the uncertain meaning of section 189(a) is aptly characterized by Commissioner Gilinsky as "disingenuous." There is no significant confusion surrounding interpretation of section 189(a). There might have once been such confusion, since the language of the Act does not specify the type of hearings required. But 28 years of consistent Commission practice with close congressional oversight have clarified any such questions.

It is manifestly apparent that the desire to alleviate confusion is not the real rationale for the proposed changes in hearing procedures. If it were, the proposed changes would only increase the confusion by circumventing the well-established historical standard of adjudicatory hearings under section 189(a). The background statement does not offer any other rationale for the changes, and gives no examples of the "unfavorable consequences" which could result from the "uncertain meaning" of section 189(a).

The real objective of the proposed changes in hearing procedures seems to be the desire to avoid the necessity of adjudicatory hearings. By providing "opportunities for hearings" independent of the provisions of section 189(a), with no statutory standards or history, the bill is intended to leave the kind of hearings required to the sole discretion of the Commission, consistent only with the minimum standards of the Administrative Procedure Act and established case law. This could mean intervenors will have no right of cross-examination, no discovery, no testimony under oath--none of the time-honored and proven adjudicatory procedures which protect parties from facing a wall of impenetrable conclusions.

According to the background statement:

the Commission has a range of options to adopt rules which could establish a hearing process as simple as requiring only written submission of the entire case or as complex as the formalized hearing process now used by the Commission pursuant to section 189(a). By separately providing the opportunity for hearing under sections 185, 193 and 194, use of the formal

procedures currently employed by the Commission under 189(a) is not required, but, on the other hand, is not precluded. Thus, under this proposal, the advantage of flexibility is gained and the potential for use of procedures pursuant to 189(a) are [sic] not lost. This type of flexibility is necessary to assure that procedures can be developed commensurate with the evolution of standardization.

The theme which implicitly underlies this proposal is that meaningful public participation is an expendable luxury unrelated to safety. This is a false premise. Just a few examples of the type of safety issues raised by the public and Boards will demonstrate the point. Some time before the TMI-2 accident, intervenors in the proceedings to license the Black Fox plant in Oklahoma raised the issue that the failure of equipment classified by NRC as not related to safety could cause serious accidents and interfere with the ability of safety equipment to bring the plant to safe shutdown after an accident. Their contention was disputed by the NRC and the Applicant, and in fact rejected by the Board on the ground that it postulated incredible sequences of failures. Yet on March 28, 1979, the TMI-2 accident was begun and aggravated by a series of failures in precisely such so-called non-safety equipment, including the famous valve which stuck open. After the accident, both the Kemeny Commission and NRC's Special Inquiry Group identified as one of the key safety problems demonstrated by the accident the lack of attention given by nuclear plant designers, operators and the NRC to equipment it classified as unrelated to safety. If the Black Fox intervenors had been heeded, nuclear plants would be safer today.

For years prior to the TMI accident, intervenors, including interested states, had sought through licensing proceedings to force utilities and NRC to design evacuation plans for the populations surrounding nuclear plants. Led by the Attorney General of New Hampshire, intervenors sought assurance that the close to 60,000 people who pack the beaches adjacent to the Seabrook plant on a summer day could be safely evacuated if necessary. The response from the NRC was that evacuation would never be necessary, hence our concern was misplaced. TMI has changed all that; evacuation plans for at least a 10-mile radius are now supposed to be required prior to licensing. However, Seabrook is now well on the way to completion and the states of Massachusetts and New Hampshire still have no assurance that their citizens can be protected. If the intervenors in Seabrook had been heeded, evacuation plans might have existed in Pennsylvania at the time of the TMI accident, averting much of the chaos and traumatic confusion which attended that accident.

Lastly, consider the case involving the McGuire plant owned by Duke Power. The McGuire plant is one of a very few in this country designed with an ice-condenser system and a thin containment. If an accident no more severe than TMI occurred at that plant, involving ignition of the same amount of hydrogen mixed with oxygen as was generated at TMI, the design pressure of that containment would be exceeded, raising the possibility of rupture and release of radioactivity into the environment. This is the issue



that was raised by the intervenor in that proceeding. The technical issues involved are not open-and-shut. Both sides have a point of view. There can be no serious dispute, however, that the issue is an extremely important one and that it should have been fully resolved before that plant went into operation.

The contributions of intervenors to nuclear safety have been noted by a congressional subcommittee specifically charged with oversight of NRC activities. The House Government Operations Subcommittee on Environment, Energy, and Natural Resources cited numerous and diverse authorities for the proposition that nuclear safety has been materially enhanced by the participation of intervenors in the licensing process. "Licensing Speedup, Safety Delay: NRC Oversight," Ninth Report by the Committee on Government Operations, H.R. Rep. No. 97-277, 97th Cong., 1st Sess. (October 20, 1981), at 32-35. The report, which puts to rest fabricated industry claims that the regulatory process was delaying start-up of completed plants by dozens of months and costing ratepayers billions of dollars, quotes Atomic Safety and Licensing Appeal Board Chairman Alan Rosenthal as saying:

Intervenors in adjudicatory proceedings do make a substantial contribution to safety. Over the years there have been substantial attacks coming from various quarters into the contribution that is made by intervenors. Indeed, much of the assertion heard from many quarters that operating licensing proceedings contribute little to the safety or the preservation of environmental values rests upon the premise that few, if any, intervenors are able to make any contribution to the ventilation of safety and environmental issues.

An appeal board in 1973 categorically rejected that argument. [The River Bend proceeding reported at 7 AEC 222.] In my judgment, that rejection seven years ago holds true today.

Id. at 32-33, quoting Transcript of Nuclear Safety Oversight Committee meeting, Washington, D.C., June 8, 1981, at 71-72. ASLAB Chairman Rosenthal went on to cite the case of intervenors' contentions concerning the Prairie Island steam generator tubes as an example of a "significant contribution to safety."

The House subcommittee report also quotes Rep. Eugene Atkinson (R-Pa.) on the importance of intervenor participation:

MR. ATKINSON: . . . according to information we have-- taking them one at a time--the Consumer Power Co., Midland plant, the intervenors claimed the utility's quality assurance program was inefficient and NRC later found this to be true.

In the case of Seabrook, intervenors pressed for an evacuation plan. TMI proved the need for such plans. In the Northern States' Prairie Island plant, the intervenors questioned the integrity of steam generating pipes. The utility later agreed and upgraded these pipes. Virginia Electric's North Anna plant, the intervenors questioned the integrity of the generator turbine. The turbine manufacturer later changed the turbine design.

I was thinking that there has been some input on the part of these people that has been helpful. . . .

Id. at 33-34. The House report continues:

As other expert witnesses have consistently testified, intervenors with the potential of raising safety questions effectively in the hearing process are a key element in a safe licensing system. Robert Lazo, Vice Chairman of the NRC's Atomic Safety and Licensing Board Panel, has pointed out that utilities and the NRC staff both do their safety analysis better because they know that unanswered safety problems can be raised and forced to resolution by intervenors in the licensing hearing:

I think we all understand if we are told that down the road there is a speed trap. That even if it is not manned the day we go by, we'll probably drive a little more slowly.

The back pressure that was talked about applies not only to the staff, but it applies to the applicants as well, and to their vendor because in preparing to file an application for an operating license, they know that it is very likely that there will be an operating license hearing.

Indeed, credible testimony suggests that where the role of intervenors has not been effective in improving the safety of new reactors, it may be because of wrongheaded resistance of the NRC staff and the utility to positions advanced by the intervenors. Commissioner Bradford gave a telling example:

Take another example of something that did not ever result in any change in the licensing process, although we all now wish, I think, that it had, and that is emergency planning.

There were a number of contexts in which citizen groups tried to raise emergency planning before Three-Mile Island. They argued repeatedly that an emergency plan should be required as a precondition to the operation of the plant.

Now, if you do a review design to determine whether citizen input has ever made a difference on the licensing process, that issue won't show up because they got turned down every time. But if you ask the question differently, that is, do we wish--was that citizen input potentially useful, and should it make a difference--the answer would have to be yes, and, in retrospect we are now requiring just what they asked for, and it would be better if we had required it sooner.

Id. at 34-35, quoting NSOC, supra, at 59, 35. The House Operations Committee ultimately concluded "that the NRC has not substantiated the need for such efforts to restrict the hearing process and it has not demonstrated that safety will not be impinged by so doing." Id. at 35. The Committee found that:

The facts before the Committee suggest that genuine economic analysis supports caution and exhaustive study prior to licensing, not rushed or truncated proceedings.

The simple fact is that a single major accident such as the TMI accident costs consumers and taxpayers many times the cost legitimately attributable to NRC licensing hearings and citizen contentions about safety problems.

The record before the Committee suggests that intervenors and the NRC licensing process have contributed to the resolution of a number of safety problems. If any one of those had been left unresolved by an expedited process and resulted in a major accident, the economic folly of such expedition would be painfully manifest.

Id. at 44.

The Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, B. Paul Cotter, Jr., strongly supported the role of adjudicatory hearings before Licensing Boards in his memorandum to Commissioner Ahearne on the NRC Hearing Process last year. In commenting on the legislation establishing the three-member licensing boards, Chief Judge Cotter states:

The [Joint Committee on Atomic Energy] intended the Boards to satisfy the original objective that

the review provided would represent a more searching, more authoritative evaluation of safety factors than is possible under the appellate court type of review . . . . (S. Rep. No. 1677, 87th Cong., 2d Sess. (1962), at 75).

Today, Board hearings benefit the public in at least four other respects: (1) Staff and applicant reports subject to public examination are performed with greater care; (2) preparation for public examination of issues frequently creates a new perspective and causes the parties to reexamine or rethink some or all of the questions presented; (3) the quality of staff judgments is improved by a hearing process which requires experts to state their views in writing and then permits oral examination in detail [as distinguished from unchallenged

(and frequently brief) written or oral statements]; and (4) Staff work benefits from two decades of hearings and Board decisions on the almost limitless number of technical judgments that must be made in any given licensing application.

Memorandum from ASLB Panel Chief ALJ B. Paul Cotter, Jr. to Commissioner Ahearne on the NRC Hearing Process, May 1, 1981, at 8.

The NRC hearing process builds permanent records in an organized fashion on a host of managerial and scientific issues for future reference. There is little, if any, merit to the argument that some other system, such as informal meetings or discussions, could replace the completeness, continuity, and consistency that the present system has built over the last two decades and permanently recorded in licensing and Appeal Board decisions.

Id. at 17-18.

The Congress was concerned that the public have a meaningful right of intervention when it created boards. Currently that right is conferred on those citizens living within a given geographical radius of a particular facility. The number and intensity of intervenors in today's proceedings clearly evidences the importance they attach to their statutory right to intervention. In fact the 1961 JCAE Staff Report did not at all anticipate the extent to which the public would avail itself of its statutory right to intervene.

It is clear that NRC hearings serve the function of resolving these controversies between applicants, the Staff, and private individuals. I do not believe that assertion needs further explication.

Id. at 18 (emphasis added).

The "flexibility" which the Commission seeks with the present proposal amounts to just one thing: unfettered Commission discretion to curtail public participation in the affected proceedings. If the Commission exercises its option under the proposal to require only written submission of the entire case, as outlined in the background statement,

opportunities for meaningful intervenor participation will be severely curtailed. The simple fact is that intervenors will seldom, if ever, possess the necessary resources to put together a satisfactory case in written submissions alone. Cross-examination in adjudicatory hearings is very often the only economically reasonable option which intervenors have to explore and expose weaknesses in the cases presented by applicants and the staff.

Under the proposed bill, all relevant information will be in the hands of the utility and staff and intervenors will be unable to obtain it through discovery. Also, utilization of informal procedures will drastically increase the standard intervenors would have to meet in order to obtain judicial review of agency decisions. The overall degree of accountability applied to NRC decisions would be effectively decimated.

It is understandable that applicants and staff are made somewhat uncomfortable by the annoying questions to which they must make some reasonable effort to respond when intervenors have party status and the right of cross-examination in adjudicatory hearings. But as has been noted, supra, that pressure on applicants and staff can only be salutary for the ultimate Commission purpose of protecting the public health and safety.

The attempt to avoid that pressure and scrutiny only in standardized design, site permit, and combined construction permit/operating license ("CP/OL") proceedings is especially baffling. Under the other provisions of this bill, decisions will be made in these proceedings on the generic acceptability of plant design and sites which might ultimately result in the licensing of numerous actual plants for each decision. The findings of these generic decisions will be virtually unassailable for periods of ten to twenty years. The consequences of such decisions will be potentially much greater than decisions granting individual construction permits-- which will presumably still be subject to the requirements of section 189(a)--yet in precisely these broad impact cases the bill would dispense with the necessity of holding adjudicatory hearings. Analogous arguments apply to the case of the combined CP/OL: Under this bill, if an applicant chose to seek only a CP, he would apparently still have to comply with the adjudicatory hearing requirement of section 189(a); but if he also seeks an OL at the same time, significantly raising the stakes, the Commission would have the flexibility to dispense with that requirement. This is an absurd result.

Commissioner Roberts states, in his separate views, that the proposed Act's provision for more flexible hearing procedures will greatly enhance the efficiency and acceptability of the agency's decisions without adversely affecting their accuracy. It is my observation that the agency's present highly-formalized court-room procedures frustrate those members of the public who genuinely want to learn about the health and environmental

effects of generating electricity by nuclear reactors and assist those who wish to delay the licensing of these reactors. More flexible hearing procedures should enable members of the public to explore their concerns without the present interference of traditional trial-type procedures.

"Hearings" will certainly be easier and quicker under the proposal, but if, as we foresee, they yield inadequate or incorrect results, it will be difficult to characterize them as more "efficient." The discussion above makes it clear that limited hearings will be likely to result in more mistakes.

In addition, Commissioner Roberts does not explain how hearing procedures which severely curtail the public's right to participate in agency decisions will enhance public acceptance of those decisions. Such restricted procedures will certainly reduce public knowledge concerning agency decisions and the bases for them. The resultant enhanced ignorance might give the appearance of enhanced acceptance.

The notion that trial-type procedures with cross-examination frustrate fact-finding and "learning" runs directly counter to one of the fundamental tenets of anglo-American jurisprudence: "For two centuries, common law judges and lawyers have regarded the opportunity of cross-examination as an essential safeguard of the accuracy and completeness of testimony . . . ." E. Cleary, ed., McCormick on Evidence (2d ed. 1972), at 43. What better way could there be for members of the public to explore their concerns about a proposed plant than to be



able to compel some sort of answers from its proponents while under oath? An applicant's written submissions of its case, or the end product of some sort of legislative-type hearing which might be settled on as an intermediate position, are much less likely to satisfy the particular concerns of any intervenor, whether that intervenor's objective is knowledge, delay, or, more likely, the avoidance of serious mistakes. An intervenor may prove his case by cross-examination alone, and the gross disparity of resources between intervenors on the one hand and applicants and staff on the other make cross-examination a particularly crucial element of public hearings.

The proposed "flexibility" to limit the type of hearings in these proceedings is the very antithesis of the recommendations of the Kemeny Commission and the NRC's internal (Rogovin) 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 taking steps to insulate the applicant and Staff from effective scrutiny.

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.

The licensing process is the primary means by which the public may force NRC to reach decisions on important safety issues. Former Commissioner Bradford emphasized this point in testimony before the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works last year (March 31, 1981):

We look to public hearings to serve two purposes. They should provide a strong and skeptical independent check on the NRC's internal reviews, and they provide the only avenue for citizens to resolve concerns about a new and serious hazard being introduced into their communities.

Congress wisely recognized the importance of public hearings when it required them in applications for construction permits in 1957 amendments to the Atomic Energy Act. The Commission has repeatedly reaffirmed the importance of hearings by establishing the firm precedent that hearings under section 189(a) should be adjudicatory. It is our experience that the hearing process is the single most fundamental protection which the public has in attempting to ensure the thoroughness, competence, and integrity of the NRC review of this inherently dangerous technology. The recognition that their assertions will be submitted under oath and subjected to the public scrutiny of a Licensing Board is a powerful deterrent to sloppy technical work and unsupported conclusions. The NRC review is far from perfect. There is no question, however, that it would be far worse without the

check of an open, public, adjudicatory hearing process. The NRC review, the licensing process, and public participation in adjudicatory hearings are not expendable formalities and the time required to accomplish them, is not wasted. On the contrary, it is a prudent investment in preventing future TMI's or worse.

Proposals which focus on curtailing the public's ability to raise and pursue safety and environmental issues carry a serious price. They can be adopted only at the risk that the issues not raised and not resolved will lead to the next TMI accident, or worse.

## II. Renewals and Changes in Standardized Designs

The second major problem with the proposed bill is that it makes renewals of standardized design approvals virtually automatic and changes in standardized designs to improve safety extremely difficult if not impossible.

### Section 103 - Standardized Design Approvals

Section 103 of the bill adds new section 194 to the Atomic Energy Act, providing for early approval of "standardized" plant designs without applications for CPs or combined CP/OLs.

Proposed subsection 194(e)(2)(B) provides that:

Upon application for renewal of an approval . . . the Commission shall renew the approval unless it finds that significant new information relevant to the design has become available subsequent to its approval and that as a result it is likely that: (1) the design will not comply with this Act or the Commission's applicable regulations; or (2) without a change to the design, the overall risk of plant operation to the public health and safety, or the

common defense and security will be substantially greater than that estimated to exist at the time of the initial issuance of the approval for which renewal is applied and the design change is necessary to bring the plant within acceptable levels of risk.

This standard for renewal of design approvals is unacceptable. It establishes a much stricter standard for denial of renewals than currently exists for requiring backfits to plants already in operation or under construction, 10 C.F.R. §50.109. It is absurd to make it more difficult to deny or condition a renewal of a design approval--which presumably would have only prospective application to actual hardware--than to require a backfit to equipment which is already in place and even in operation. Under existing regulations,

[t]he Commission may . . . require the backfitting of a facility if it finds that such action will provide substantial, additional protection which is required for the public health and safety or the common defense and security.

10 C.F.R. §50.109. Under the proposed new legislation, such a finding of "substantial, additional protection" would not be sufficient for the Commission to take the much less burdensome step of refusing to renew a 10-year-old design or conditioning renewal on design changes. Rather, the bill would make renewal virtually automatic. In order to deny renewal, the Commission would have to find either: (1) that the design would violate the law, or (2) that without a change, the "overall risk" of the plant will be substantially greater than was originally estimated, and the change is necessary to bring the plant "within acceptable levels of risk."

The references to "overall risk" and "acceptable levels of risk" can only imply the use of quantitative, probabilistic risk assessment (PRA), such as the Rasmussen Report, WASH-1400. As the history of use of the Rasmussen Report itself shows, PRA's are so fraught with scientific uncertainties as to preclude an objectively defensible determination of their validity. Even the "best" PRA's have an uncertainty of at least a factor of 10. For the low-probability but high-consequence events that are often most critical to the analysis, uncertainties are as high as a factor of 100. Analyses which yield such uncertain results are not appropriate for regulatory decision-making. In addition, quantitative risk assessments are inherently subject to manipulation to achieve desired political or regulatory results. This proposed standard would institutionalize the use of such quantitative assessments of risk to resist all safety improvements. This would represent a practical abandonment of the "defense in depth" safety philosophy which at least nominally characterizes regulation of nuclear power at present.

Commissioner Gilinsky suggests changing "substantially" to "significantly" in the language of subsection 194(e)(2)(B), and adding a third alternative criterion for denial of renewal:

or (3) it can be demonstrated that the design change is necessary to reduce substantially the overall risk of plant operation.

This would be a significant improvement, as any change which substantially reduces risk should be required as a condition of renewal. However, if the "overall risk" language still implies that some sort of quantitative measurement would be required, it suffers from the same deficiencies discussed above. If it is clear that a change would provide substantial additional protection, as specified in section 50.109 of the Commission's regulations, the change should be required as a condition of renewal of a design approval, or the renewal should be denied. The existing state-of-the-art does not allow meaningful quantitative assessment of overall risk, so reliance on such assessments would provide only an artificial appearance of a scientific basis for decision-making.

#### Section 104 - Stability of Standardized Designs

This adds new section 196 to the Atomic Energy Act, which provides for "stability" of standardized plant designs.

Section 196 reads:

No licensee of, or license applicant for a production or utilization facility shall be required to change an approved final standardized plant design unless it can be demonstrated that without a change to the design: the overall risk of plant operation to the public health and safety, or the common defense and security will be substantially greater than that estimated to exist at the time of the initial issuance of the approval and the design change is necessary to bring the plant within acceptable levels of risk. This provision shall not preclude the imposition of design change requirements for renewal of and approval of a design nor shall it preclude a licensee from making voluntary design changes subject to appropriate Commission review for the purpose of improving plant safety or operations.

This is essentially the same issue as just discussed (section 103 of the proposed bill) in a slightly different context: here, rather than the standard for renewal, the issue is the standard for required changes at times other than renewal (during the period of effectiveness of the approval). The standard is exactly the same as the second alternative standard in proposed section 194(e)(2)(B), above. Incredibly, in this instance, licensees will not even have to change approved designs if those designs would violate the Atomic Energy Act or Commission regulations.

The discussion above on section 103 applies equally to section 104: quantitative assessments of overall risk lack sufficient scientific basis and verifiability to use them as grounds for regulatory actions of this kind. Commissioner Gilinsky would add two additional alternative standards to the one provided in proposed section 196:

--the design will not comply with the AEA or the Commission's applicable regulations in existence at the time that the license was granted; or

--the overall risk posed by plant operation will be substantially greater than if the change to the design were made.

These changes would at least render standardized designs subject to the law and regulations in effect at the time a license is granted, and allow for changes in designs where substantial safety improvements would result. But these provisions would still shield designs from changes in the law or regulations after a license is granted--a protection not now afforded even to operating plants.

It is improper to put the burden on the Commission to show that risk will be "substantially" greater than originally estimated before a change to a standardized design can be mandated. If a change would substantially enhance the protection of the public health and safety, it is the Commission's statutory responsibility to mandate the change.

Finally, if the language of proposed section 196 concerning "appropriate Commission review" of licensees' voluntary design changes is meant to exclude opportunities for public hearings on the sufficiency of those changes, it is unacceptable. "Appropriate Commission review" cannot mean simply NRC Staff check-off of proposed voluntary changes, otherwise wholesale changes might be effected by negotiation between the industry and NRC Staff without opportunities for public participation.

### III. Other Matters

There are several other significant problems with the proposed Act. Those will be discussed section-by-section.  
Section 101 - Construction Permits and Operating Licenses

This amends section 185 of the Atomic Energy Act and adds new subsections (b) and (c).

1. Specification of the latest date for completion of construction should not be deleted from section 185(a). It is appropriate for the Commission to require the holder of a construction permit to use it (build), not sit on it. Slowing down, stopping and then restarting construction poses



potential safety problems. The Commission's argument that financial incentives to complete the job are sufficient ignores the fact that financial considerations have frequently been responsible for delays in construction in recent years. Coupled with the provisions (below) that site permits and approvals of standardized designs would be effective as long as application for a CP or combined CP/OL is submitted within 10 years, this provision would make those permits essentially infinite in duration. An applicant could effectively "grandfather" its plant against changes in safety requirements for an unknown period, even though it had not begun serious construction.

2. The provision in new section 185(b) that the NRC may rely on the certification of the Federal Energy Regulatory Commission (FERC) of the need for power that would be provided by a proposed facility is unacceptable. If NRC is going to rely on outside determinations of need for power, it should rely on the determinations of the states involved. State Public Utility Commissions and Power Facility Siting Commissions have the knowledge and experience to make meaningful determinations in this regard. In addition, those state agencies have powerful incentives to make correct determinations as they must live with the consequences of a decision that a facility is needed--higher utility rates. FERC has no particular credibility on this issue.

3. New section 185(c) provides for issuance of a combined construction permit and operating license (CP/OL) for a standardized nuclear plant. If done correctly, that is, with final designs at the CP stage, one-step licensing should not be limited to standardized plants. Complete plant designs should be required in applications to construct and operate all plants, as Commissioner Gilinsky suggests. This would aid the applicant by greatly reducing the possibility that backfits will be required and thus shortening construction time. It would aid public participation and reduce chances for later delay by making it possible to deal with virtually all issues concerning the design and siting of the plant at the earliest possible time. We read section 185(c) as requiring submission of a complete, final design in an application for a combined CP/OL.

4. Even with a complete design included in the CP/OL application, there must still be an opportunity for public, adjudicatory hearings prior to commencement of operation to support the Commission's required "finding" that the facility has been constructed and will operate in conformity with the license. The best design in the world will not assure the safety of the plant if it is not built properly, and the public must continue to have an opportunity to raise those issues in hearings. Present controversies involving quality assurance and construction errors at Zimmer, the South Texas Project, Comanche Peak and Diablo Canyon are excellent examples of the need for an opportunity to examine the utility's performance prior to commencement of operation.

The combined CP/OL procedure can and should give applicants much greater stability in plant designs--i.e., insurance against required backfits except where they are mandated by substantial new safety considerations. The combined CP/OL procedure could significantly reduce construction times by minimizing backfits and reducing the resources required by a second full-scale licensing proceeding. These benefits to applicants are predicated entirely on the submission of complete designs in their applications. The combined CP/OL procedure cannot, however, be used as an excuse to avoid full public participation and scrutiny on the issue of conformity of the constructed plant with its license, the law, and current NRC regulations.

#### Section 102 - Early Site Approval

This adds a new section 193 to the Atomic Energy Act which authorizes the approval of one or more sites for nuclear power plants prior to the filing of any application to construct or operate such a facility.

5. We see no reason why fees for site permit applications should be deferred. Surely the taxpayers should not bear these costs. It is hard to believe that a utility that is otherwise prepared to go forward with the legal fees and consultant's costs involved in pursuing a site permit would be influenced against taking this action because of the permit application fee. This largesse by the taxpayers to the industry is unwarranted.

6. The 10-year effectiveness of a site permit provided in proposed subsection 193(e)(1) (10 years from issuance of site permit until filing of application for CP or combined CP/OL) is acceptable only if the final date for completion of construction under a CP is not deleted from section 185(a) (See #1 above). If both of these provisions were adopted, the site permit would be essentially infinite in duration as long as an application were filed within 10 years.

7. Subsection 193(e)(2)(A) provides that the holder of a site permit may apply for a renewal, and that the Commission may renew or extend a permit upon review by the Commission. The background statement explains that "Renewal would be based only upon the application of a permit holder." The implication that renewal would be essentially automatic is inescapable and unacceptable. The permit holder should have to demonstrate that nothing significant has changed since the permit was originally issued, and there should be an opportunity for public hearings on that issue.

8. Commissioner Gilinsky's suggested addition to subsection 193(e)(1), providing for the match between site parameters and plant design to be considered in the CP hearing, and for a separate hearing to consider those issues for combined CP/OL proceedings, is an important one and should be added to any proposal. It must not be possible for a pre-approved site to be combined with a pre-approved "standardized" design without ever holding any hearings on the specific project.

9. We agree with Commissioners Ahearne and Gilinsky that "standardized design" should be defined in the statute, and find the definition suggested by Commissioner Gilinsky acceptable.

Section 103 -- Standardized Design Approval

This adds new section 194 to the Atomic Energy Act, providing for early approval of "standardized" plant designs without applications for CPs or combined CP/OLs. Its provisions are parallel to those in section 193, providing for early site approval, except for the standard for renewal of approval of a standardized design (See Part II). Consequently, the comments above in paragraphs 5, 6, 8 and 9 pertaining to section 102, apply equally to section 103 (with "standardized design approval" substituted for "site permit" where appropriate).

Standardized designs are currently approved on the basis of the preliminary design information required for a construction permit. The bill would apparently continue this practice. Since the level of detail is practically nil, the result is that standardization is ineffective and confusing. For example, the "standardized" Westinghouse design, RESAR, is referenced by Commanche Peak, Millstone 3, and the Seabrook plants, which are all substantially different from one another. Approval of a standardized design that vague and unspecified amounts to buying a pig in a poke. In exchange for approval of a standardized design, manufacturers should at least be required to present a final design.

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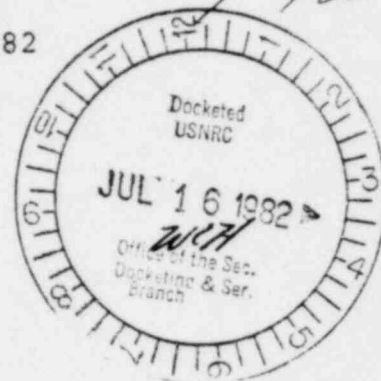
PR-Misc Notice

July 16, 1982

(47 FR 24044)

27

Rec'd  
RRTF  
7/16/82



Chairman  
Regulatory Reform Task Force  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Gentlemen:

The enclosed comments are submitted on behalf of the American Nuclear Energy Council (ANEC), the Atomic Industrial Forum (AIF), and the Edison Electric Institute (EEI) in response to the Commission's Notice of Request for Comments on Proposed Legislation: Nuclear Standardization Act of 1982 (47 F.R. 24044 et seq.).

These comments are the result of a concerted effort by the nuclear industry during the last six months to address the issues relating to needed reform of the nuclear licensing process. This effort involved the work of several AIF and EEI committees and the active participation of ANEC. The comments represent our joint views from both a technical and legal standpoint.

We recognize the considerable effort which the Commission and its Regulatory Reform Task Force have expended in considering licensing reform and appreciate such effort. Nonetheless, we have serious concerns with the legislation as currently proposed. While your review is requested on our detailed comments, we especially call your attention to the following:

- The proposed legislation does not address the fundamental regulatory problems now facing the nuclear industry related to plants in operation and in the pipeline, and, hence, fails to provide for overall reform needed to correct these most serious concerns;
- The backfitting standards proposed in the legislation are inadequate and in our judgment will not achieve the desired result of providing stability to the licensing process;
- The proposed legislation does not provide needed guidance with respect to the hearing process or the purpose and general format of such hearings, thus leaving open a serious question as to whether reform of the licensing process will in fact be achieved;

Jane Axelrad  
9604 MNB

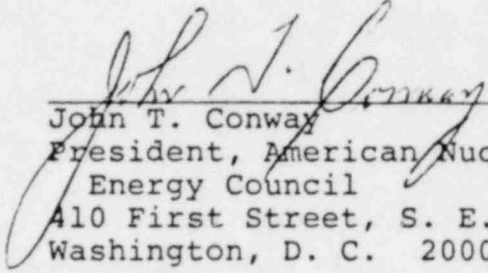
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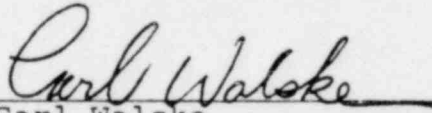
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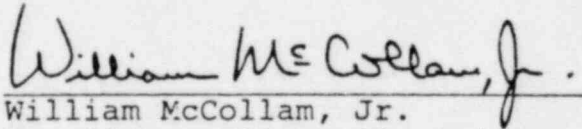
- The proposed legislation does not provide an adequate basis for meeting the desired goal of one-stage licensing and standardization for future plants.

We are prepared to meet with the Commission and its representatives to discuss our position on licensing reform as embodied in these comments.

Sincerely yours,

  
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JC:CW:WM:seu  
Enclosure

cc: The Honorable Nunzio J. Palladino  
The Honorable Victor Gilinsky  
The Honorable John F. Ahearne  
The Honorable Thomas M. Roberts  
The Honorable James K. Asselstine

Comments of  
The American Nuclear Energy Council  
The Atomic Industrial Forum  
and  
The Edison Electric Institute  
in Response to Notice of Request for  
Comments on  
Proposed Legislation: Nuclear Standardization Act of 1982  
(47 Federal Register 24044-95, June 2, 1982)

July 16, 1982



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The American Nuclear Energy Council  
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and  
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in Response to Notice of Request for  
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Proposed Legislation: Nuclear Standardization Act of 1982  
(47 Federal Register 24044-95, June 2, 1982)

Introduction

The American Nuclear Energy Council (ANEC), the Atomic Industrial Forum (AIF), and the Edison Electric Institute (EEI), appreciate the opportunity to comment on the proposed Nuclear Standardization Act of 1982 (47 F.R. 24044-95, June 2, 1982), a legislative proposal developed by the Nuclear Regulatory Commission to provide for design approval, stability of design and one-step licensing for standardized nuclear power plants, and for early site approval.

The American Nuclear Energy Council represents more than 100 organizations having an interest in nuclear power. ANEC coordinates and advocates the legislative objectives of all segments of the nuclear industry.

The Atomic Industrial Forum is an international organization of approximately 600 domestic and overseas organizations interested in the peaceful applications of nuclear energy. These organizations include electric utilities, manufacturers, architect/engineer/construction firms, service organizations, consultants, mining and milling companies, radionuclide and radio pharmaceutical suppliers, financial institutions, labor unions, universities, legal firms, government agencies and research laboratories.

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 the electricity in the country, and serve more than 77 percent of all ultimate electricity customers.

Our comments are presented as follows: Section I summarizes and highlights the comments. Section II provides our comments on the legislative proposals contained in the draft Nuclear Standardization Act of 1982. Section III presents our views on the legislative proposals listed in the Notice Summary as possible additional suggestions which the Regulatory Reform Task Force might make to the Commission. We have also reviewed the requests for comments contained in the separate views stated by Commissioners Ahearne, Gilinsky and Roberts and those noted by two members of the Regulatory Reform Task Force. Section IV summarizes where those views are addressed in our comments on the proposed legislation (Section II) and the listed legislative proposals (Section III).

I. Summary of Comments

ANEC, AIF and EEI commend the NRC for taking the initiative in suggesting nuclear licensing reform legislation. The current statutory licensing procedures were developed when nuclear... technology was in its infancy. The experience of our members indicates that, in practice, this process has proven to be cumbersome and uncertain, lacking in stability and unnecessarily costly to utilities and to the consumer. In this regard, the present licensing process diverts scarce industry and regulatory resources from uses that would better serve safety aims. Further, the current nuclear licensing regime and its associated regulatory burden impose significant cost impacts and resource dislocations and act as a deterrent to the expanded use of nuclear power as the economy recovers and the need for electric generation increases.

A. Need for Legislation and Facing the Priority Problems

It is vitally necessary that any proposed legislation address the priority regulatory problems currently impacting on plants in operation and under construction, as well as the regulatory process for future plants. Because the proposed legislation does not address the hearing process or the fundamental problems regarding backfitting on operating plants and plants under construction, it has no beneficial impact on the basic

regulatory problems of immediate concern to the nuclear industry. Thus, while a number of the concepts embodied in the NRC proposal are welcome, we believe the proposed legislation is seriously lacking and in need of expansion and strengthening. We also find the proposed legislation with respect to standardization and one-step licensing for future plants to be deficient and unlikely to accomplish its goals.

We urge that the process of administrative reform proceed expeditiously within existing authority. Indeed, achieving integrated reform in a timely and consistent manner will require a combination of administrative changes and legislative steps. The first administrative change which should be made -- and which should be made now -- is reform of the backfitting rule.\*

#### B. Highlights of Comments

Our comments on the proposal are developed in more detail below and may be highlighted as follows:

1. The proposed legislation is not comprehensive. The fundamental regulatory problems now facing the industry, chiefly backfitting and an outdated, counterproductive hearing process, are not addressed adequately.
2. The backfitting provisions for future standardized plants contained in this proposal are inadequate. The standards for backfitting contained in Sections 194 and 196 of the proposed legislation are unworkable and, in our judgment, will not achieve the desired result of providing for design stability. In addition, the proposed legislation does not contain a standard for stability with respect to site approvals. A single backfitting standard applicable in all circumstances (i.e., standardized design approvals, site approvals, standardized plants, operating plants and plants under construction) should be contained in the legislation. Our proposal with respect to a backfitting standard and its application is described below at page 8.

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\*/Modification of the backfitting rule does not require additional legislative authority although such legislation is desirable. See pages 5-6 below.

3. The proposed legislation does not provide guidance as to when a hearing is or is not required or as to the hearing purpose and format. Clear and predictable guidance is required for a stable licensing process. Legislation explicitly authorizing non-adjudicatory hearings is desirable in order to avoid confusion and costly, lengthy administrative and judicial proceedings. We recommend that any proposed legislation provide for hybrid hearings. The purpose of the hearing should be solely one of dispute resolution and no hearing should be required where there is no dispute or where issues have been resolved in a prior proceeding.
4. The standardized design approval concept should be structured so as to allow the option for approval of major plant segments as well as approval of a whole nuclear plant.
5. The provisions for a combined construction permit and operating license (CP/OL) must be revised and strengthened in order to be effective.
  - o The CP/OL process should not be limited to standardized plants but should be available for any plant design having an appropriate degree of design detail. The limits established by the proposed legislation can result in highly inefficient uses of resources already expended.
  - o The degree of detail required for a combined CP/OL should be more flexible and less restrictive. The level of detail suggested in the proposed legislation and the accompanying analysis is unworkable.
  - o As drafted, the proposed legislation could result in a second licensing hearing stage prior to plant operation, thereby defeating one of its major purposes. The requirement that the Commission make a "finding" prior to the start of operation implies a second authorizational stage. The pre-operational role of the agency should be that of inspection and testing to

verify compliance with the requirements of the previously issued combined CP/OL. In addition, the opportunity for a licensing hearing should be afforded solely at the combined CP/OL stage and the proposed legislation should so state.

6. The provisions of the proposed bill relating to the role of Federal Energy Regulatory Commission (FERC) are not appropriate in legislation dealing with NRC regulatory reform under the Atomic Energy Act. The authority of the FERC is only one aspect of complex issues of federal-state relations and should not be included incidentally in a licensing reform bill.

## II. Comments on Sections of the Nuclear Standardization Act of 1982

### A. Backfitting Issues

One of the most serious regulatory problems confronting the NRC and its licensees is that of backfitting. Especially since the TMI-2 accident, the NRC has issued a myriad of significant and costly backfitting requirements and proposed requirements. Many of these requirements and proposed requirements are of doubtful significance in terms of increases in plant safety, and have been imposed or proposed without appropriate criteria used for their justification. These requirements also cause unnecessary expense which ultimately is borne by utility ratepayers. Moreover, when all of the generic modifications applied to a plant are viewed together, they often conflict and produce counter-productive results.

The imposition of backfitting requirements on operating plants can give rise to potential safety problems if utilities are not allowed adequate leadtime for careful design and installation, for revision of operating procedures and for retraining of plant personnel. Care must also be taken to assure that uncoordinated "bunching" of retrofit requirements does not exceed reasonable utility management capability to supervise effectively engineering, procurement, installation and training.

Accordingly, we believe there is a need for reform of both the NRC's criteria and its procedures for the imposition of backfitting requirements. The Commission should proceed immediately with administrative reform with respect to backfitting by adoption of implementing rules and regulations without awaiting amendments to the Atomic Energy Act. In this regard, the establishment by the Commission of the Committee to

Review Generic Requirements (CRGR) as a mechanism for assuring responsible applications of backfitting requirements was a welcome first step in addressing this problem, and the efforts of the CRGR merit strong Commission support.

Although there is substantial latitude for administrative reform under existing law, appropriate legislation is desirable since it would provide a clear expression of Congressional intent and a continuing impetus for the NRC to enforce the backfitting criteria and procedures.

Regrettably, the proposed Nuclear Standardization Act of 1982 applies only to new, standardized plants. The need for backfitting reform for operating plants and those in the licensing pipeline is far more immediate and pervasive; that need should be given the highest priority within the NRC in the area of licensing reform. Thus, the proposed legislation should be modified to include a single unified backfitting standard applicable in all situations where backfitting questions arise.

The legislation proposed by the NRC contains backfitting standards in Sections 194e(2)(B) (renewal of standardized plant design approval) and 196 (stability of standardized plant design). These provisions are neither adequate nor workable, and we strongly urge their substantial revision (see p. 8 for the backfitting rule which we propose).

1. Proposed Section 196

The standard for backfitting contained in Section 196 of the proposed legislation is that backfitting will not be required "unless it can be demonstrated that without a change to the design, the overall risk of plant operation to the public health and safety, or the common defense and security will be substantially greater than that estimated to exist at the time of the initial issuance of the approval and the design change is necessary to bring the plant within acceptable levels of risk."

We oppose inclusion of the concept of an acceptable level of risk in a statutory backfitting standard. Use of the safety goal concept in legislation is premature at this time. Such a concept anticipates the adoption of rational safety goals, and suggests that completion of a probabilistic risk assessment (PRA) is necessary prior to every backfit decision.



Quantitative risk assessment is desirable but may be practical only where the data warrant its use and the matters to which it is applied are amenable to such assessment.

In addition, the backfitting standard in Section 196 would apply only to licensees or license applicants that have used an approved standardized design. No standards have been established regarding changes to an approved standardized design which may be imposed on the approval holder. Without such standards, it is highly unlikely that the large investments, which are sure to be necessary to obtain approval of standardized designs, will be made in an effort to obtain such approval. In our judgment, this omission in the proposed legislation (which may have been inadvertent) defeats its central purpose.

## 2. Proposed Section 194

The standard for renewal of a design approval contained in Section 194e(2)(B) of the proposed legislation is that the Commission shall renew the approval "unless it finds that significant new information relevant to the design has become available subsequent to its approval and as a result it is likely that: (1) the design will not comply with this act or the Commission's applicable regulations; or (2) without a change to the design, the overall risk of plant operation to the public health and safety, or the common defense and security will be substantially greater than that estimated to exist at the time of the initial issuance of the approval for which renewal is applied and the design change is necessary to bring the plant within acceptable levels of risk."

For the reasons stated above, we also oppose the inclusion of the concept of an acceptable level of risk in statutory standards for renewal of design approvals. In addition, this renewal standard would allow the Commission to refuse a design approval renewal on the basis that the design no longer complies with the Commission's applicable regulations. This would allow the Commission to require backfitting to an approved design without any showing by the Commission that such changes are cost-beneficial. Clearly, such a process is at odds with the concept of design stability.

## 3. Backfitting Site Approvals and Renewals

No standard for backfitting an approved site, either during the term of a site approval or upon its renewal, has been included in the proposed legislation. As with design approvals, without backfitting standards, it is highly unlikely that the large investment necessary to obtain a site approval will be made.

#### 4. Recommendation on Backfitting

The proposed legislation should be modified to include a single backfitting standard applicable in all situations where backfitting questions arise -- proposed modifications of issued permits and licenses, of design and site approvals and in renewal of such approvals. We favor a standard for backfitting under which no backfitting would be required by the Commission unless it can be clearly demonstrated that the proposed backfit is justified by improvement in overall plant safety that will be realized, taking into account all appropriate factors, and that the benefits of such proposed improvements outweigh the costs. With respect to an appropriate backfitting standard, the term "backfitting" should be defined in the legislation or accompanying analysis. Such a definition should make it clear that backfitting includes new analyses or testing requirements which impose substantial costs on licensees or approval holders as well as modifications to the site or structures, systems or components of a facility. Proposed modifications to pre-approved designs should be considered only in proceedings for generic amendments of the design, not in individual licensing proceedings.

#### 5. Voluntary Design Changes

Licensees and holders of approved designs should be allowed to make voluntary design changes for the purpose of achieving reductions in costs of construction, operation or maintenance, or increases in plant capability, reliability, or operating life. Such voluntary design changes should be permitted without prior Commission approval unless a proposed change involves a revision in the technical specifications incorporated in the license or design approval or involves an unreviewed safety question.

#### B. Proposed Amendments to Section 185

The Commission proposes to amend Section 185 of the Act to (1) eliminate the current provision for designation of an earliest and latest completion date, (2) add a new subsection (b) authorizing the Commission to rely upon the certification of need for power by the Federal Energy Regulatory Commission, and (3) add a new sub-section (c) to authorize the issuance of a combined construction permit and operating license. For the reasons set forth below, we endorse the first change, oppose the second, and support the concept of the third but believe further modification is necessary for the provision to be effective.

1. Earliest and Latest Completion Date

The requirement that a construction permit include an earliest and latest completion date is an anachronism. The reasons stated by the Commission in its Notice (47 F.R. 24046) fully support the elimination of this requirement of Section 185 of the Act.

2. Reliance on FERC Certification

The Commission's proposal to include in its legislation a provision for the determination of the need for power by the FERC is inappropriate. The need for power determination is made under the National Environmental Policy Act, not under the Atomic Energy Act, and is in no way related to standardization. More importantly, FERC currently does not have the authority to make need for power determinations or certifications.

The complex institutional relationships of the federal government and states should not be treated incidentally in an NRC licensing reform bill. The Commission currently has the authority to cooperate with states and other federal agencies in efforts to minimize duplicative resolution of issues and to give appropriate weight to the record made and decisions reached by these other governmental bodies. This includes... issues relating to need for power.

3. Combined Construction Permit/Operating License

Proposed Section 185c restricts the issuance of a combined construction permit and operating license to standardized nuclear power plants. The Commission, in the analysis of this proposed change, contemplates that a standardized design will be an "essentially complete final design for a whole nuclear power plant usable at multiple sites." (47 F.R. 24046). We see no reason why a combined construction permit and operating license should not be issued for any design for which sufficient detail is provided to enable NRC to determine that the design satisfies appropriate safety requirements and the common defense and security. Restricting the use of this single-stage process to designs which can be used at more than one site does not, for example, allow the single stage process to be used in the replication or duplication of existing plants on the same site. Such a restriction would also preclude designs for deferred plants, where considerable design detail may be already available, from using this option. This provision, therefore, promotes inefficient use of resources already expended on nuclear plant designs.

The phrase "essentially complete final design" implies that the level of detail needed to obtain a combined CP/OL is essentially that which is now required in an FSAR. This level of detail is not needed for the NRC to make a final safety determination on plant design. Certain information now provided in the FSAR such as equipment test and inspection results cannot be provided until actual equipment procurement and installation or construction. The workable level of design detail required to obtain a combined CP/OL should be developed through implementing regulations and guidance.

Proposed Section 185c also requires the Commission to "find" that the facility has been constructed and will operate in accordance with the provisions of the combined CP/OL, of the Act, and of the rules and regulations of the Commission. As formulated and without further specification as to its application, this provision could thwart single-stage licensing.

The Commission should have the responsibility to insure through inspection and testing that the plant was built in accordance with the combined CP/OL and that all other Commission requirements for operation are satisfied. There should, however, be no further authorization required of the NRC and no hearing at this "non-licensing" stage of the combined CP/OL process.

Requiring the Commission to "find" that the facility has been properly constructed prior to commencement of operation could effectively reinstitute the uncertainties of the two-stage licensing process. Such a requirement would make the licensee vulnerable both to an additional NRC design approval (i.e., a design review beyond inspection and verification that the plant has been built in conformance with the license) and to a hearing on that matter and the aforesaid compliance review. The safety determination that the plant is designed and can be constructed in conformance with the conditions of the license should be made by the Commission when the single-stage license is issued. The issuance of that license will be based on an extensive NRC design review. Such review, together with the inspections and tests made by the NRC during construction to verify that the construction conforms to the license and that other pre-operational requirements have been met, is entirely adequate for the NRC to assure the public health and safety and common defense and security. There should, in short, be no further "proceeding" prior to commencement of operation and no hearing at that time. The statutory language should not establish the possibility of the foregoing even by

implication. The proposed legislation and accompanying analysis should, in fact, be explicit in this regard if one-stage licensing (with the resources committed in reliance thereon) is to be a reality.

An alternative to an NRC "finding" which, in our judgement, would protect the public health and safety while maintaining the advantages of the single-stage process is to require the licensee to formally certify to the NRC that the licensee has complied satisfactorily with the applicable requirements of the license to enable operation. Operation thus could begin within a specified time after the NRC receives such certification unless the NRC issues an order restricting or prohibiting such action. This specified time period should be relatively short because it is anticipated that the NRC will closely audit the licensee's verification process throughout construction. The NRC, therefore, should be aware of any discrepancies which would require operation to be restricted or prohibited. In order to provide adequate assurance that this process is truly reflective of a single-stage licensing process, the action of certification by the licensee should not provide a basis for a reopening of the licensing process.

### C. Proposed Section 193

Proposed new Section 193 would create statutory authority for the issuance of early site approvals and would confirm and strengthen the Commission's existing practice of conducting early site reviews at the request of an applicant. We endorse this concept with the additional suggested modifications and comments which follow. In addition and as noted below, we believe that the Commission must offer appropriate amendments to Section 189a with respect to the hearing process as an integral part of any legislative proposal. If this is done, the reference to an opportunity for a public hearing in proposed Section 193d(1) and the provisions for judicial review in proposed Section 193d(2) will be superfluous and should be deleted.

#### 1. Proposed Section 193a

This section of the proposal establishes inappropriate limits on the type of applicants who may seek an early site permit. Early site permits should be available to any "person" as that term is defined in Section 11s of the Atomic Energy Act.

## 2. Proposed Section 193b (and 194b)

Proposed Section 193b provides for deferral of payment of fees otherwise payable on application filing or issuance of an early site permit, and on amendment or renewal thereof. A similar concept is contained in Section 194b of the proposal with respect to application for and issuance of a standardized design approval. The costs covered by the fees would be allocated to applicants who propose to use the approved site or standardized plant design.

We support the concept of deferral of fees since we strongly believe, as stated in the section-by-section analysis, that such deferral provides an important incentive to the investment of resources necessary to realize standardization and early site approval. However, the skeletal allocation mechanism suggested in the bill is confusing and possibly unworkable since multiple payments of fees from several applicants could result. We recommend that the legislation merely provide for deferral of fee payments and that the time for and manner of payment of deferred licensing fees be resolved in a future Commission rulemaking.

The NRC's licensing fee system for standardized plants must be cost-based, consistent with the Independent Offices Appropriations Act of 1952 and the cases decided thereunder, and OMB Circular A-25. Any licensing fee schedule which results in multiple payments of the same costs (as, for example, where several applicants eventually use the same site, or where several applicants reference the approved standardized design) constitutes a system in which fees improperly exceed costs. Similarly, collection of "accrued interest," as discussed in the section-by-section analysis of proposed Section 194b (but omitted in the discussion of proposed Section 193b), is not appropriate since such amounts exceed the NRC's costs of processing applications in violation of the authorities cited above. Collection of interest (which would exceed the amount of the fee itself) would also act as a disincentive to the use of the procedures for early site permits and standardized design approvals.

## 3. Proposed Section 193c

This proposed section envisions (according to the section-by-section analysis, 47 F.R. 24046-47) that a site permit application will identify plant parameters, including the number, type or types, and thermal power level of the

facilities to be located on the site. While the statutory language is appropriately general, the section-by-section analysis suggests that the only approvable application is a fairly detailed application. This suggested level of detail is not necessarily appropriate, and may in fact be impossible to achieve where an applicant intends to bank a site for a number of years. In addition, this interpretation is potentially in conflict with proposed new Section 193g which on its face permits review and approval of "limited aspects of the suitability of the site."

The section-by-section analysis of this section should make it clear that an applicant may describe an acceptable environmental impact "envelope" for a particular site without the necessity of specifying detail about the plant when plant characteristics have not been finally determined. This would allow the applicant the flexibility of constructing one or more facilities on that site so long as the environmental impacts associated with those facilities remain within the approved envelope of acceptable environmental impacts. At the same time, an applicant should be free to specify as much site and plant detail during the early site review process as he wishes, should such specification be consistent with his planning processes.

4. Proposed Section 193e(1)

The term "filed", which appears in this section, is ambiguous. We are interpreting filing to mean the date of submission of and not the docketing of an application.

5. Proposed Section 193e(2)

This subsection of the proposal provides for renewal of a site permit upon application of the permit holder. We support the renewal concept but believe it must be modified.

In order to promote predictability and stability in the licensing process, there should be presumptive renewal of a site permit following its initial ten year term, subject to the special considerations discussed below in this subsection of our comments. Renewal should not be an occasion to re-review issues resolved prior to issuance of the original site permit, as use of the phrase "review by the Commission" in proposed Section 193e(2)(A) suggests. At the end of the initial term, the NRC should review the site permit in light of any significant new information relative to the site. The NRC

should not, however, require any changes to the permit, either during its effective term or upon review for renewal, unless it determines that such changes are necessary under the Commission's backfitting standard (discussed in the backfitting comments above in Section II.A).

6. Proposed Section 193g

This section of the bill permits the Commission to make a "determination with respect to limited aspects of the suitability of the site." The section-by-section analysis, by its reference to 10 CFR 2.600, appears to limit approval of limited aspects of site suitability to only those cases where an application for a permit to construct a utilization facility has been filed. This is inconsistent with the apparent purpose of the legislation as inferred from Section 193a (i.e., to allow approval of limited aspects of a plant site, notwithstanding the fact that no application for a construction permit or combined construction permit and operating license for a facility or facilities has been filed).

In addition, the meaning of the phrase "inviting a request" is unclear. An applicant should not have to await a specific request from the Commission prior to seeking limited site review. Finally, it is not clear what standing a "determination" on aspects of a site has in relation to the privileges conveyed by a site permit. We believe that approval of limited aspects of a site should be possible and should have the same stature with respect to the items covered by the site review.

D. Proposed Section 194

Proposed Section 194 would provide statutory support to the standardization concept by providing for Commission approval of standardized facility designs. We endorse this concept, but believe that the proposed new statutory provisions are too restrictive and should be modified. In addition, changes to certain other features of the proposed section are desirable to make certain that the benefits of extensive judicial interpretations of current law and implementing regulations are not lost.

1. Proposed Section 194a

Section 194a of the bill authorizes and directs the Commission to establish procedures allowing for approval of "standardized nuclear power plant designs" whether or not a construction



permit or combined CP/OL application has been filed. We support the authorization for approval of designs independent of CP or CP/OL applications. The proposal is, however, unnecessarily restrictive in contemplating that a standardized design will be "an essentially complete final design for a whole nuclear power plant usable at multiple sites." (The term "standardized design" is not defined in the proposed legislation, but the contemplation as to its meaning is contained in the section-by-section analysis accompanying the proposal. See also the separate views of Commissioners Ahearne and Gilinsky).

As stated previously, the term "final design" is inappropriate since it implies all of the detail now required in an FSAR. Certain information now provided in the FSAR, such as equipment test and inspection results, cannot be provided until actual equipment procurement and installation or construction. In this regard, for the balance of plant particularly, overly detailed specifications of components may have anti-competitive implications.

Limiting the use of approval of standardized designs to whole nuclear power plants is an unnecessary restriction on the nuclear industry which could require a substantial restructuring of the present commercial framework for design and construction of nuclear power plants in the United States. In our opinion, forcing such a restructuring by legislation is inappropriate. The evolution to whole plant standardization should come about as a consequence of market forces and not through government legislation.

The Atomic Energy Act of 1954 currently authorizes licenses for production and utilization facilities. In Sections 11v and 11cc of the Act, the definitions of production and utilization facilities include "any important component part especially designed for such equipment or device as determined by the Commission." The flexibility inherent in this definition should be retained in the Act. There is no reason why the standardization concept should not be applied to less than an entire plant. Hence, we recommend that the proposed legislation permit standardized design approval for an entire nuclear power plant, major portions of a plant (e.g., NSSS, nuclear island, balance of plant, etc.) or any important component part as defined by the Commission.

In summary, the proposed restriction on scope of design and on the required level of detail would be inconsistent with current

standardization programs, which contemplate that a lesser level of detail will suffice for partial plant standardization. The practical reasons supporting such a course are equally applicable here if standardization is to be a viable concept.

2. Proposed Section 194d

Section 194d(1) authorizes approval of an application for a standardized plant design, with appropriate conditions, if the Commission "determines that the proposed standardized plant design is suitable for the construction and operation of the facility or facilities described in the application consistent with public health and safety." This standard differs from the language presently in the Atomic Energy Act and implementing Commission regulations. For reasons elaborated below, the standard used should be consistent with current law and regulations, and the language of Section 194(d)(1) should be so modified.

Under Section 103 of the Atomic Energy Act, a license may not be issued "if, in the opinion of the Commission, the issuance of the license . . . would be inimical to the common defense and security or to the health and safety of the public." 10 CFR 50.40(c) adopts the same language. 10 CFR 50.57(3) and 10 CFR 50.35(c)(2) require findings of "reasonable assurance" that the health and safety of the public will not be endangered. 10 CFR 50.57(6) also uses the "inimical" standard. The language of the Act and Commission regulations has been extensively interpreted by the courts, including the United States Supreme Court. It is, therefore, important either to adhere to the current legislative and regulatory language or to have good reason for adopting different language. No such good reason is apparent here and, accordingly, we recommend that the language of proposed Section 194d(1) be modified to provide for approval of standardized plant designs, major portions of a plant, or important component parts, where the Commission determines that issuance of such approval will not be inimical to the common defense and security or the health and safety of the public.

Section 194d(1) also makes reference to providing an opportunity for public hearing. As noted below, we believe the Commission must offer appropriate amendments to Section 189a as an integral part of its legislative proposal. If this is done, reference to opportunity for a public hearing, and the provision of proposed Section 194d(2) relating to judicial review, will be superfluous and should be deleted.

### 3. Proposed Section 194e

Section 194e(1) provides that a design approval shall be valid for a facility if application has been filed within ten years from the date of issuance of the design approval. We support this concept, which we understand to mean that issues relative to the design of such facility may not be re-reviewed or raised -- and hence the design approval is "valid" -- in connection with consideration of the CP or CP/OL application. This preclusion is of sufficient importance that it should be stated specifically in the legislation itself.

Section 194e(2)(A) would require that the holder of a design approval apply for renewal of the approval after the initial ten year period. In order to promote predictability and stability in the licensing process, renewal of design approval should be presumptive, subject to the special circumstances described below in this subsection of our comments. At the end of the initial ten year term, the NRC should review the design approval in light of any significant new information relevant to the design approved. The NRC should not, however, require any changes in the approval, either during its effective term or upon review for renewal, unless it determines that such changes are necessary under the Commission's backfitting standard. See discussion in Section II.A above.

Section 194c(2)(B) of the bill provides criteria for renewal. We support provision for renewal, but believe that the portion of the standard relating to likelihood of increased risk or bringing the plant within acceptable levels of risk is inappropriate and should be deleted. (See discussion of backfitting in Section II.A above).

#### E. Findings and Purpose

Some of the findings and purposes included in the proposed legislation are laudable concepts. For example, Sections 2(a)(1) and 2(a)(2) are appropriate findings in a bill relating to standardization. Sections 2(a)(10) and 2(a)(13) of the findings, requiring consideration of both the costs and benefits of NRC regulatory decisions, are particularly appropriate findings in all NRC legislation. In contrast, Sections 2(a)(7) and 2(a)(11) are not appropriate as legislative findings, and Section 2(a)(6) should be eliminated consistent with our comments on need for power determinations which appear above at page 9.

### III. Additional Legislative Reform Proposals

In its June 2, 1982, Federal Register notice, the Nuclear Regulatory Commission invited public comment on further legislative proposals for the reform of the nuclear licensing process, including proposals to: (1) amend Section 189a of the Atomic Energy Act of 1954 to clarify the scope of the Commission's discretion in selecting hearing formats; (2) eliminate the mandatory requirement for construction permit hearings; (3) adopt a backfit rule of general applicability; and (4) eliminate the "present" requirement of the quorum rule. (47 F.R. 24044). Our comments on these issues follow.

#### A. Amendment of Section 189

##### 1. Alternatives for Which Comment was Requested by the Commission

With respect to the first proposal, amendment of Section 189, the Commission indicated that it was considering four alternatives. (47 F.R. 24044). The first alternative would incorporate the Sholly amendment and provide for hybrid hearings; the second, in addition, would eliminate the mandatory requirement for construction permit hearings and require thirty days notice prior to granting license applications; the third would give the Commission "broad discretion" in selecting the hearing format; and the fourth would give the Commission "maximum discretion" in selecting the hearing format. The Commission did not elaborate further on these alternatives in the Federal Register notice.

##### 2. Need for Amendment

We firmly believe that legislation should be enacted to amend Section 189. As presently conducted, nuclear licensing hearings lack a clear purpose and attendant focus, generate unnecessary costs and delays in the licensing of facilities and divert scarce technical resources from safety-related activities. In our view, the present trial-type hearing serves neither the purpose of meaningful public participation nor that of sound decision-making on safety issues.

Although we believe that the Commission presently possesses sufficient legal authority to adopt a more flexible and less formal hearing process, legislation is advisable as a practical matter. In 1962, in considering the legislation that was to

establish the current operating license hearing format, the Joint Committee on Atomic Energy stated its preference for informal procedures but declined to mandate such procedures in that enactment because the Joint Committee believed that the NRC's predecessor, the Atomic Energy Commission, already possessed sufficient authority to follow informal hearing procedures: "Having pointed out the desirability of informal procedures, and the legal latitude afforded the Commission to follow such procedures, the Committee [did] not believe it necessary to incorporate specific language in the legislation requiring informal procedures." Senate Report No. 1677, 87th Cong., 2d Sess., reprinted in [1962] U.S. CODE CONG. & AD. NEWS 2207, 2213. Nonetheless, the AEC and NRC have consistently conducted all licensing hearings with a trial-type format, and the present Commission entertains doubt as to its latitude for marked departure given that background. In these circumstances, legislation specifically mandating less formal hearing procedures is plainly in order if that hearing course is to be pursued with assurance that its validity will be sustained in any judicial challenge.

According to the Notice of Request for comments, the NRC's proposed "Nuclear Standardization Act of 1982" would authorize the Commission "to adopt rules which could establish a hearing process as simple as requiring only written submission of the entire case or as complex as the formalized hearing process now used by the Commission pursuant to section 189a" in proceedings for the issuance of combined construction permit and operating licenses, design approvals, and site permits. (47 F.R. 24046) We find that approach troublesome from the standpoint of licensing practicality.

While it might be conceptually desirable to custom-tailor hearing procedures to the needs of individual proceedings, we see in such a process offsetting disabilities of hearing unpredictability and constant vulnerability to judicial contest and reversal. As two members of the NRC task force that drafted the bill warned (47 F.R. 24095), the proposed formulation is likely to increase the confusion surrounding requisite hearing procedures. In our view, authorization of informal hearing procedures should be expressly stated in reform legislation. Moreover, any such authorization should apply to all licensing proceedings, rather than just single-stage licensing, as well as to design approval and site permit proceedings.\*

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\*/Adjudicatory procedures should, of course, be retained with respect to enforcement proceedings, in keeping with precepts of due process and the hearing course presently prescribed by the Administrative Procedures Act.

### 3. Hybrid Hearings

We recommend the amendment of Section 189 to authorize the use of a "hybrid" hearing process in nuclear regulatory proceedings. The central precept of such a hybrid process is that the Commission would provide adjudicatory-type procedures only where a party has raised a genuine and substantial dispute of fact, the resolution of which is likely to be essential to the licensing decision, and where the issue can be resolved with sufficient accuracy only through adjudicatory procedures. Such a hearing process has garnered impressive support from those concerned with nuclear licensing and its problems, as well as from advocates of general administrative agency reform. It already has been included in the proposed "National Nuclear Waste Policy Act of 1981" (S.1662) and in the more broadly applicable Regulatory Reform Act (S.1080). In addition, we understand that a hybrid hearing process is contemplated by the Department of Energy's forthcoming legislative proposal. (Remarks delivered by Benard Rusche to the Atomic Industrial Forum Licensing Conference, May 24, 1982).

In our view, a viable and equitable hybrid hearing process would include the following elements:

- Any person would have an opportunity, following public notice, to submit written views for the proceeding record.
- Any person whose interest may be affected would be entitled to petition the hearing officer for an opportunity for oral presentation. Such an opportunity for oral presentation would be granted only with respect to issues which the hearing officer determines to be in controversy and as to which the petitioner states his contentions and the bases therefor with reasonable specificity. Prior to oral presentation, the NRC would provide for discovery and require all parties to submit in writing all facts and arguments to be relied upon in the oral presentation.
- Following oral presentation, each party would be entitled to submit, in writing, (a) proposed findings setting forth issues which require for their resolution an adjudicatory hearing (within the meaning of the Administrative Procedure Act) and (b) the reasons why an adjudicatory hearing is required as to such issues. An adjudicatory hearing would be held when the issue presents a genuine and substantial

dispute of fact which can be resolved with sufficient accuracy only through adjudicatory procedures and the issue's resolution is critical to a decision in the proceeding. Such a hearing would be held, moreover, only with respect to issues put in contention by the parties.

- Applying the above-stated criteria, the hearing officer would designate the issues which require an adjudicatory hearing, and the Commission would review and approve or disapprove such designations.
  - A reviewing court could set aside such a Commission determination only if (a) an objection to the procedure used was presented to the hearing officer in a timely fashion, and (b) the court found that failure to utilize the requested procedure precluded the fair consideration and informed resolution of a central issue in the proceeding.
  - With respect to all issues not accorded an adjudicatory hearing, the hearing officer will make determinations based on the application and all presentations submitted for the proceeding record.
4. Hearings with Respect to Combined CP/OL Issues and Commission Hearings

Section 189 should also be amended to make it clear that, with respect to combined construction permit/operating license proceedings, the sole opportunity for a licensing hearing would be prior to issuance of that combined license, in keeping with the concept of single-stage licensing. In addition, Section 189 should be amended to govern the issues that may be considered and information that may be admitted in an oral presentation or adjudicatory hearing under the foregoing procedures. No hearing presentation should be permitted unless the proposed issue is relevant and material and meets standards for substantiation established by the Commission. No issue that has been resolved in any prior licensing proceeding should be entertained unless significant new information is presented which would affect substantially the conclusions reached with respect to such previously resolved issue. Such a preclusion would encompass public health and safety, common defense and security, and environmental issues previously resolved. Design or site issues that have been resolved in a design or site

approval proceeding would be excluded from facility licensing proceedings in which those approvals are referenced; the sole forum for their reconsideration should be a proceeding seeking amendment of the design or site approval. As is noted above, the proposed legislation does not clearly preclude reconsideration of design or site issues where design certifications or site approvals have been granted.

#### 5. Immediate Effectiveness of Amendments

Section 189 should be amended further to authorize the Commission to issue and make immediately effective amendments to licenses prior to the conduct and completion of a public hearing where the Commission finds that the amendment involves no significant hazards consideration. In this regard, we support the provisions of either version of the NRC authorization bills now pending in the House and Senate. We would also support the extension of this concept to cases in which the Commission has reviewed an application for amendment which involves a significant hazards consideration and has determined that the amendment may be issued.

#### B. Elimination of Mandatory Construction Permit Hearings

We support the Commission's proposal to eliminate mandatory construction permit hearings (i.e., hearings in uncontested proceedings). A requirement for hearings on all construction permit and operating license applications was introduced into Section 189 in 1957. In 1962, the mandatory hearing requirement was eliminated with respect to operating licenses because the resultant hearings were regarded as unnecessary and burdensome in the absence of bona fide intervention. An identical premise has long supported elimination of a mandatory hearing for construction permits in the absence of intervention.

The sole appropriate function of the licensing hearing -- be it a construction permit hearing, an operating license hearing, or a hearing on a combined CP/OL -- is the resolution of licensing issues properly in dispute. The centrality of this principle to the sound functioning of the hearing process is sufficiently important, in our view, to deserve specific endorsement in the "findings" embodied in this legislative proposal. Among its other applications, this principle plainly argues there should be no hearing if there is no dispute.



C. Adoption of a Backfit Rule of General Applicability

As noted above in Section II.A, we believe the Commission should proceed immediately with administrative reform with respect to backfitting without awaiting amendments to the Atomic Energy Act. The need for backfitting reform is the most immediate and pervasive problem facing the nuclear industry. Further, we favor a unified backfitting standard applicable to all plants, standardized design approvals, and site permits.

D. Elimination of the Quorum Rule

Section 201(a)(1) of the Energy Reorganization Act of 1974 requires a quorum of three Commissioners to be present physically at a meeting of the Commission for the transaction of business. In the June 2, 1982, Federal Register notice, the Commission stated that it was considering an amendment which would permit the Commission to take decisional action in writing without holding a formal meeting at which a quorum is present. (47 F.R. 24044). Although elimination of the so-called quorum rule would have little if any effect on the substantial problems of the licensing process, we would support such an amendment as advancing the efficiency, practicality and timeliness of Commission operations.

IV. Separate Views of Commissioners and Task Force Members

Commissioners Roberts, Ahearne and Gilinsky and Task Force Members Crane and Wenner filed separate suggestions and requests for comments on the proposed legislation. The issues raised in those separate views are addressed in the foregoing comments as follows:

- Whether legislation is necessary (Commissioners Roberts, Ahearne and Gilinsky). See Sections I.A, II.A, III.A and III.B.
- Hearing procedures (Commissioners Roberts, Ahearne and Gilinsky, and Task Force Members Crane and Wenner). See Sections III.A and III.B.
- Definition of standardization (Commissioner Ahearne and Gilinsky). See Sections II.B.3 and II.D.1.

- Standards for backfitting (Commissioner Ahearne and Gilinsky). See Section II.A.
- Interest on deferred application fees (Commissioner Gilinsky). See Section II.C.2.
- Authority of FERC on need for power determinations (Commissioner Gilinsky). See Section II.B.2.
- Procedures for circumstances involving combinations of standardized and non-standardized designs and pre-approved sites and sites which have not been reviewed (Commissioner Ahearne). See Section II.B.3.

Dated: July 16, 1982