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COMMENT

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The Gulf Coast Environmental Defense Foundation, Inc., a not for profit corporation formed under the laws of the State of Texas, now files this comment on the proposed rule of the Nuclear Regulatory Commission, which would allow the Commission to decide the "immediate effectiveness" of licensing board decisions in construction permit hearings for nuclear material fueled electricity generating stations. This comment opposes the rule on the grounds it ignores conclusions of the Advisory Committee on Constructiong During Adjudication, as published in the Commission report, NUREG - 0646 of January, 1980.

The proposed rule would make possible the immediate effectiveness of an ASLB decision on a construction permit prior to full appellate review by the Commission, thereby permitting an Applicant to begin construction of a facility. This was the case prior to the Three Mile Island - II accident of March 29, 1982, which had the effect (among others) of changing that rule to the current status. But, as early as the Seabrook construction permit proceeding, particularly between 1976 and 1978, the Commission found itself faced with appeals after construction had started. And the Commission had expressed major discontent over the state of the Seabrook licensing odyssey where, "large sums of money are committed and sites are irrevocably altered", while an appeal remained to be adjudicated on site related issues. (Public Service Company of New Hampshire, Seabrook Station, Units 1 & 2, 7 NRC 1, 7, 1978)

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Out of such discontent for "immediate effectiveness" was born the "Ad hoc Committee on Construction During Adjudication" which reported following study of all cases where the rule was relevant and interview of many ASLB and ASLAB members, findings which indicate the immediate effectiveness rule is poor administrative law. Particularly relevant among the findings to this proposal are:

Finding No. 2

The immediate effectiveness rule, together with the current stay standards, creates an adverse public perception and detracts from public confidence in the licensing process. Once full-scale construction gets under way and the site is cleared, it is difficult for a layman to believe that subsequent appellate review could stop the plant.

Finding No. 5

The immediate effectiveness rule creates a risk of serious economic and social dislocation due to temporary stays or reversals on the merits after construction has begun.

Finding No. 6

The immediate effectiveness rule makes it likely that substantial environmental impacts will occur before the administrative process is complete.

Finding No. 7

In the typical reactor project, about 5% of the total project cost is invested at the time an LWA is granted; about 2.5% more is spent between the LWA and the CP, and about 8% is spent during the year following the CP.

Finding No. 13

The present system makes it unlikely that the Commission itself will be able to review any case until substantial construction has occurred. This complicates the Commission's alternate site review because of the sunk costs rule. Also, it may cause the Commission to feel pressure during its review.

Finding No. 15

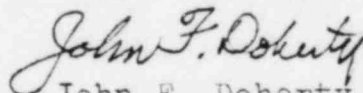
The immediate effectiveness rule was part of an effort to increase the ability of nuclear power to compete with other forms of electric generation. Efforts such as this are no longer an objective of the Commission. Thus the original basis for the rule has vanished.*/

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NUREG-0646, Report of the Advisory Committee on Construction During Adjudication" (The Milhollin Report); January 1980, pp. 1-2 to 1-5.

Recently there has been a change in regulation nationwide which is relevant here. In Texas, and other states, Public Utility Commissions have now been granting utilities monies spent in pre-license engineering and other expenses, even though the plant is not constructed. The utilities' burden in regaining this money is only that it be "reasonable." Hence, the ratepayers of the utility now relieve the utilities of risks in sunk costs. Hence, utilities have less reason to moderate spending on newly licensed facilities which they are constructing during appeal. Finding number seven of the Advisory Committee on Construction During Adjudication, indicates that if an appeal took a year from the date of the Construction permit, 15.5% would be spent by the utility of the nuclear plant whole cost. The result of a scenario like this is that the Commission (or other appellate body) would be pressured to save money by approving the site where plant construction has already started. Under these conditions, Justice becomes a hostage!

The Commission should strive in its rules to avoid such situations. As pointed out in the Advisory Committee on Construction During Adjudication Finding #2, it makes the public lose confidence in the agency. And that agency is responsible for regulation of nuclear fission, an extremely dangerous process. That would, I believe caution the Commission that this proposed rule is best not accepted.

Respectfully,



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