



CHAIRMAN

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

September 12, 1983

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Executive Office of the President  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

The Office of Management and Budget has requested the views of the Nuclear Regulatory Commission concerning S. 1275, the "Administrative Law Judge Corps Act."

The Commission now uses Administrative Law Judges for anti-trust proceedings relating to nuclear power plant licenses and hearings contesting civil penalties. The majority of the agency's formal adjudications, however, are conducted by three-judge Atomic Safety and Licensing Boards, each of which consists of one law member, who chairs the panel, and two technical members. These proceedings involve the licensing of nuclear power plant construction and operation under sections 181 and 191 of the Atomic Energy Act of 1954, 42 U.S.C. §§ 2231, 2241, subject to the Administrative Procedure Act (APA). This system was established by Congress in explicit recognition of the technical, scientific nature of the questions that are before the NRC in its licensing cases, and has served the agency well by ensuring that the complex issues involved in nuclear licensing are fully explored.

Section 191 of the Atomic Energy Act now exempts the agency from the requirement of APA sections 7 and 8 that formal adjudications be conducted by ALJ's, 5 U.S.C. §§ 556, 557, and the proposed bill makes no mention of the administrative judges now staffing the NRC's Licensing Boards. Moreover, our Licensing Board judges, are not "Administrative Law Judges" appointed through APA procedures, 5 U.S.C. § 3105.

Consequently, we believe S. 1275 as now drafted leaves intact the Commission's existing authority to use such Boards, independent of the ALJ Corps, and the bill would have little effect, if any, on the conduct of NRC formal adjudicatory proceedings.

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PDR COMMS NRCC  
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Mr. James M. Frey

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Since the majority of the proceedings under the NRC's present adjudicatory system would not come within the ambit of S. 1275, the Commission feels it is unnecessary to provide any comments on the bill's provisions. If an Administrative Law Judge Corps should be established under S. 1275, or if a more limited experimental program like that suggested by the Chairman of the Administrative Conference of the United States in his testimony on S. 1275 is legislatively provided for, the Commission undoubtedly will monitor closely the implementation and effectiveness of such a program in other agencies in an effort to determine whether the Corps concept offers any substantive benefits for the agency's hearing process.

Commissioner Gilinsky thinks that the Corps concept provided by S. 1275 may prove to be worthwhile and that the Commission should explore the feasibility of integrating the judges of the NRC Licensing Boards into the proposed ALJ Corps.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nunzio J. Palladino".

Nunzio J. Palladino