



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

50-445/446

DEC 18 1984

The Honorable Lloyd Bentsen
United States Senate
912 Federal Building
Austin, Texas 78701

Dear Senator Bentsen:

Thank you for forwarding the November 2, 1984 letter of Mr. Hayden G. Haby, Jr. The NRC does not require Licensees and Applicants for Operating Licenses to submit data pertinent to system load, operating capacity, and reserve capacity, and we currently do not possess the information by which we can verify Mr. Haby's statements regarding the current operation of the Texas Utilities power system.

The NRC is responsible under the Atomic Safety Act of 1954, as amended, to assure that licensed nuclear power plants provide adequate protection of the public health and safety. Consistent with its statutory responsibilities, it is the policy of the Commission that the licensing of nuclear power plants should be conducted in an expeditious manner, consistent with the requirements of fairness (Enclosure 1). I can assure you that the Commission is conducting the licensing proceeding of the Comanche Peak Steam Electric Station ("CPSES") in accordance with applicable laws, NRC regulations, and the Commission's policy statement. In particular, the Atomic Safety and Licensing Board ("ASLB") has already convened a second panel to consider certain issues in the CPSES licensing proceeding (Enclosure 2).

The NRC staff has also formed a special task force to address approximately 500 allegations regarding the adequacy of CPSES plant construction. The safety concerns raised in these allegations involve complex technical matters which need to be thoroughly investigated by the NRC to determine the quality of the plant's design and construction. Certain of the allegations evaluated to date have been shown to have safety significance requiring corrective action by Texas Utilities. The task force is making every effort to expeditiously complete its evaluation and to present its findings to the ASLB in the licensing hearings for the CPSES.

Additionally, although the plant has essentially been built, there are design and construction items, modifications, inspections and tests which must be completed or accomplished before the CPSES can be licensed. For example, there are several Safety Evaluation Report outstanding issues which need to be resolved. The more significant of these issues pertain to the safe shutdown

design of the plant and the design of certain emergency response equipment and related emergency operating procedures. Further, the plant is currently undergoing major preoperational testing to verify equipment operability at elevated temperatures and pressures. These tests must be satisfactorily performed to determine the plant's readiness for licensing.

I hope that this brief response and the information enclosed with the letter will be helpful to you in responding to Mr. Haby. If I can be of further assistance, please let me know.

Sincerely,

(Signed) William J. Dircks

William J. Dircks
Executive Director for Operations

Enclosures:

1. Statement of Policy on Conduct
of Licensing Proceedings, Federal
Regulations, pages PS-49 through PS-51
2. Establishment of Atomic Safety and Licensing
Board to Preside in Proceeding, ASLBP
No. 79-430-C5A OL, issued March 30, 1984

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POLICY STATEMENTS

previously imposed orders.¹ The appendix R criteria specify limits on the doses which may result to offsite individuals from radioactive effluents resulting from cleanup and decontamination activities. Those criteria supplement the existing restrictions on the licensee's cleanup activities.

The Commission expects to receive continuous advice from the TMI-2 Advisory Panel on major activities required to accomplish expeditious and safe cleanup of the TMI-2 facility. This advice will be important to the Commission throughout the cleanup process.

Dated at Washington, D.C., this 27th day of April 1981.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.

46 FR 28533

Published 5/27/81

Statement of Policy on Conduct of Licensing Proceedings

I. Background

The Commission has reviewed the docket of the Atomic Safety and Licensing Board Panel (ASLBP) and the current status of proceedings before its individual boards. In a series of public meetings, the Commission has examined at length all major elements in its licensing procedure. It is clear that a number of difficult problems face the agency as it endeavors to meet its responsibilities in the licensing area.

This is especially the case with regard to staff reviews and hearings, where requested, for applications for nuclear power plant operating licenses.

Historically, NRC operating licensing reviews have been completed and the license issued by the time the nuclear plant is ready to operate. Now, for the first time the hearings on a number of operating license applications may not be concluded before construction is completed. This situation is a consequence of the Three Mile Island (TMI) accident, which required a reexamination of the entire regulatory structure. After TMI, for over a year and a half, the Commission's attention and resources were focused on plants which were already licensed to operate and on the preparation of an action plan which

specified changes necessary for reactors as a result of the accident.

Although staff review of pending license applications was delayed during this period, utilities which had received construction permits continued to build the authorized plants. The staff is now expediting its review of the applications and an unprecedented number of hearings are scheduled in the next 24 months. Many of these proceedings concern applications for operating licenses. If these proceedings are not concluded prior to the completion of construction, the cost of such delay could reach billions of dollars. The Commission will seek to avoid or reduce such delays whenever measures are available that do not compromise the Commission's fundamental commitment to a fair and thorough hearing process.

Therefore, the Commission is issuing this policy statement on the need for the balanced and efficient conduct of all phases of the hearing process. The Commission appreciates the many difficulties faced by its boards in conducting these contentious and complex proceedings. By and large, the boards have performed very well. This document is intended to deal with problems not primarily of the boards' own making. However, the boards will play an important role in resolving such difficulties.

Individual adjudicatory boards are encouraged to expedite the hearing process by using those management methods already contained in Part 2 of the Commission's Rules and Regulations. The Commission wishes to emphasize though that, in expediting the hearings, the board should ensure that the hearings are fair, and produce a record which leads to high quality decisions that adequately protect the public health and safety and the environment.

Virtually all of the procedural devices discussed in this Statement are currently being employed by sitting boards to varying degrees. The Commission's reemphasis of the use of such tools is intended to reduce the time for completing licensing proceedings. The guidelines set forth below are not to be considered all inclusive, but rather are to be considered illustrative of the actions that can be taken by individual boards.

II. General Guidance

The Commission's Rules of Practice provide the board with substantial authority to regulate hearing procedures. In the final analysis, the actions, consistent with applicable rules, which may be taken to conduct an efficient hearing are limited primarily by the good sense, judgment, and managerial skills of a presiding board which is dedicated to seeing that the process

moves along at an expeditious pace, consistent with the demands of fairness.

Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations. When a participant fails to meet its obligations, a board should consider the imposition of sanctions against the offending party. A spectrum of sanctions from minor to severe is available to the boards to assist in the management of proceedings. For example, the boards could warn the offending party that such conduct will not be tolerated in the future, refuse to consider a filing by the offending party, deny the right to cross-examine or present evidence, dismiss one or more of the party's contentions, impose appropriate sanctions on counsel for a party, or, in severe cases, dismiss the party from the proceeding. In selecting a sanction, boards should consider the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern or behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances. Boards should attempt to tailor sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance. At an early stage in the proceeding, a board should make all parties aware of the Commission's policies in this regard.

When the NRC staff is responsible for the delay of a proceeding the Chief Administrative Judge, Atomic Safety and Licensing Board Panel, should inform the Executive Director for Operations. The Executive Director for Operations will apprise the Commission in writing of significant delays and provide an explanation. The document will be served on all parties to a proceeding and the board.

III. Specific Guidance

A. Time

The Commission expects licensing boards to set and adhere to reasonable schedules for proceedings. The Boards are advised to satisfy themselves that the 10 CFR 2.711 "good cause" standard for adjusting times fixed by the Board or prescribed by Part 2 has actually been met before granting an extension of time. Requests for an extension of time

¹The licensee's petition under license DFR-72 has been read and found through the order issued February 11, 1980. The revocation of order issued August 15, 1980, and the amendment of order issued November 14, 1980.

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should generally be in writing and should be received by the Board well before the time specified expires.

B. Consolidated Intervenor

In accordance with 10 CFR 2.715a, intervenors should be consolidated and a lead intervenor designated who has "substantially the same interest that may be affected by the proceedings and who raise[s] substantially the same questions" Obviously, no consolidation should be ordered that would prejudice the rights of any intervenor.

However, consonant with that condition, single, lead intervenors should be designated to present evidence, to conduct cross-examination, to submit briefs, and to propose findings of fact, conclusions of law, and argument. Where such consolidation has taken place, those functions should not be performed by other intervenors except upon a showing of prejudice to such other intervenors' interest or upon a showing to the satisfaction of the board that the record would otherwise be incomplete.

C. Negotiation

The parties should be encouraged to negotiate at all times prior to and during the hearing to resolve contentions, settle procedural disputes, and better define issues. Negotiations should be monitored by the board through written reports, prehearing conferences, and telephone conferences, but the boards should not become directly involved in the negotiations themselves.

D. Board Management of Discovery

The purpose of discovery is to expedite hearings by the disclosure of information in the possession of the parties which is relevant to the subject matter involved in the proceeding so that issues may be narrowed, stipulated, or eliminated and so that evidence to be presented at hearing can be stipulated or otherwise limited to that which is relevant. The Commission is concerned that the number of interrogatories served in some cases may place an undue burden on the parties, particularly the NRC staff, and may, as a consequence, delay the start of the hearing without reducing the scope or the length of the hearing.

The Commission believes that the benefits now obtained by the use of interrogatories could generally be obtained by using a smaller number of better focused interrogatories and is considering a proposed rule which would limit the number of interrogatories a party could file absent a ruling by the Board that a greater number of interrogatories is justified. Pending a Commission decision on the proposed rule, the Boards are reminded

that they may limit the number of interrogatories in accordance with the Commission's rules.

Accordingly, the boards should manage and supervise all discovery, including not only the initial discovery directly following admission of contentions, but also any discovery conducted thereafter. The Commission again endorses the policy of voluntary discovery, and encourages the boards, in consultation with the parties, to establish time frames for the completion of both voluntary and involuntary discovery. Each individual board shall determine the method by which it supervises the discovery process. Possible methods include, but are not limited to, written reports from the parties, telephone conference calls, and status report conferences on the record. In virtually all instances, individual boards should schedule an initial conference with the parties to set a general discovery schedule immediately after contentions have been admitted.

E. Settlement Conference

Licensing boards are encouraged to hold settlement conferences with the parties. Such conferences are to serve the purpose of resolving as many contentions as possible by negotiation. The conference is intended to: (a) have the parties identify those contentions no longer considered valid or important by their sponsor as a result of information generated through discovery so that such contentions can be eliminated from the proceeding; and (b) to have the parties negotiate a resolution, wherever possible, of all or part of any contentions still held valid and important. The settlement conference is not intended to replace the prehearing conferences provided by 10 CFR 2.715a and 2.752.

F. Timely Rulings on Prehearing Matters

The licensing boards should issue timely rulings on all matters. In particular, rulings should be issued on crucial or potentially dispositive issues at the earliest practicable juncture in the proceeding. Such rulings may eliminate the need to adjudicate one or more subsidiary issues. Any ruling which would affect the scope of an evidentiary presentation should be rendered well before the presentation in question. Rulings on procedural matters to regulate the course of the hearing should also be rendered early.

If a significant legal or policy question is presented on which Commission guidance is needed, a board should promptly refer or certify the matter to the Atomic Safety and Licensing Appeal Board or the Commission. A board should exercise its best judgment to try to anticipate crucial issues which may require such guidance so that the

reference or certification can be made and the response received without holding up the proceeding.

G. Summary Disposition

In exercising its authority to regulate the course of a hearing, the boards should encourage the parties to invoke the summary disposition procedure on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues.

H. Trial Briefs, Profiled Testimony Outlines and Cross-Examination Plans

All or any combination of these devices should be required at the discretion of the board to expedite the orderly presentation by each party of its case. The Commission believes that cross-examination plans, which are to be submitted to the board alone, would be of benefit in most proceedings. Each board must decide which device or devices would be most fruitful in managing or expediting its proceeding by limiting unnecessary direct oral testimony and cross-examination.

I. Combining Rebuttal and Surrebuttal Testimony

For particular, highly technical issues, boards are encouraged during rebuttal and surrebuttal to put opposing witnesses on the stand at the same time so that each witness will be able to comment immediately on an opposing witness' answer to a question. Appendix A to 10 CFR Part 2 explicitly recognizes that a board may find it helpful to take expert testimony from witnesses on a round-table basis after the receipt in evidence of prepared testimony.

J. Filing of Proposed Findings of Fact and Conclusions of Law

Parties should be expected to file proposed findings of fact and conclusions of law on issues which they have raised. The boards, in their discretion, may refuse to rule on an issue in their initial decision if the party raising the issue has not filed proposed findings of fact and conclusions of law.

K. Initial Decisions

Licensing proceedings vary greatly in the difficulty and complexity of issues to be decided, the number of such issues, and the size of the record compiled. These factors bear on the length of time it will take the boards to issue initial decisions. The Commission expects that decisions not only will continue to be fair and thorough, but also that decisions will issue as soon as practicable after the submission of proposed findings of fact and conclusions of law.

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Accordingly, the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel should schedule all board assignments so that after the record has been completed individual Administrative Judges are free to write initial decisions on those applications where construction has been completed. Issuance of such decisions should take precedence over other responsibilities.

IV. Conclusion

This statement on adjudication is in support of the Commission's effort to complete operating license proceedings, conducted in a thorough and fair manner, before the end of construction. As we have noted, that process has not, in the past, extended beyond completion of plant construction. Because of the considerable time that the staff had to spend on developing and carrying out safety improvements at operating reactors during 1979-1980, in the wake of the Three Mile Island accident, this historical situation has been disrupted. To reestablish it on a reliable basis requires changes in the agency review and hearing process, some of which are the subject of this statement.

As a final matter, the Commission observes that in ideal circumstances operating license proceedings should not bear the burden of issues that ours do now. Improvement on this score depends on more complete agency review and decision at the construction permit stage. That in turn depends on a change in industrial practice: submittal of a more nearly complete design by the applicant at the construction permit stage. With this change operating license reviews and public proceedings could be limited essentially to whether the facility in question was constructed in accordance with the detailed design approved for construction and whether significant developments after the date of the construction permit required modifications in the plant.

Dated at Washington, D.C., this 20th day of May 1981.

For the Commission,
Samuel J. Chilk,
Secretary of the Commission.

46 FR 36969
Published 7/16/81

Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement; Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision of Criterion 29f.

SUMMARY: In a Federal Register document published on January 23, 1981 (46 FR 7540-7546, FR Doc. 81-2428), the NRC published Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement. As published at 46 FR 7544, Col. 1, Criterion 29f, which states "ban on major construction prior to completion of the aforementioned stipulations," is inaccurate. This document corrects the text of Criterion 29 by revising paragraph f. to read as follows:

"f. A ban on major construction prior to completion of the written environmental analysis stipulated in Criterion 31."

FOR FURTHER INFORMATION CONTACT: John F. Kendig, Office of State Programs, Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 492-9891.

Dated at Washington, D.C. this 10th day of July 1981.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.

46 FR 47906
Published 9/30/81

Statement of Policy on Issuance of Uncontested Fuel Loading and Low Power Testing Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: In October 1979 the Commission suspended its policy that permitted the issuance of nuclear power reactor construction permits and operating licenses by the staff in uncontested cases and directed that no such permits or licenses could be issued except upon prior review by the Commission itself. 44 FR 58559 (October 10, 1979). In the past months, the

Commission has revised those procedures in a way designed to improve the licensing process. 46 FR 28627 (May 28, 1981). In this issue of the Federal Register, the Commission is publishing final rules which retain to the Commission itself the decision of whether or not an applicant will be granted authority for commercial operation, i.e., full power operation. These final rules will permit fuel loading and low power (up to 5 percent of rated power) testing to be authorized by the Director of Nuclear Reactor Regulation after a favorable decision by a Licensing Board in a contested case. This Statement announces the Commission's intention that in future uncontested cases full power operation will be authorized by the Commission. However, in such cases, the Director shall authorize fuel loading and low power testing without the need to obtain prior Commission approval.

Dated at Washington, D.C. this 24th day of September, 1981.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.

46 FR 51100
Published 10/16/81

Policy Statement on Low-Level Waste Volume Reduction

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement on low-level waste volume reduction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has established a policy regarding the volume reduction of low-level radioactive waste. The policy statement addresses: (1) The need for volume reduction policy; and (2) the need for waste generators to minimize the quantity of waste produced. The policy also states that NRC will take expeditious action on requests for licensing of volume reduction systems. (A copy of this notice is being sent to all licensees and state authorities to advise them of this policy.)

EFFECTIVE DATE: October 16, 1981.

FOR FURTHER INFORMATION CONTACT: Robert E. Browning, Deputy Director, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Phone 301/427-4200.

SUPPLEMENTARY INFORMATION:

Policy Statement

The Commission has established the following policy:

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

TEXAS UTILITIES GENERATING COMPANY, ET AL. '84 APR -2 P2:34

(Docket Nos. 50-445-OL and 50-446-OL) DOCKETED
BRANCH

[ASLBP No. 79-430-05A OL]

SERVED APR 2 1984

ESTABLISHMENT OF ATOMIC SAFETY AND LICENSING BOARD
TO PRESIDE IN PROCEEDING

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, and pursuant to the Statement of Policy on Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), and the request of the Atomic Safety and Licensing Board already established to preside in this operating license proceeding, a separate Atomic Safety and Licensing Board is being established to preside over the proceeding on all allegations of intimidation and harassment.

TEXAS UTILITIES GENERATING COMPANY, ET AL.

Comanche Peak Steam Electric Station, Units 1 and 2

Construction Permit Nos. CPPR-126 and CPPR-127

This Board is being established pursuant to a notice published by the Commission on February 5, 1979, in the Federal Register (44 FR 6995 ff) entitled, "Availability of Applicant's Environmental Report, Consideration of Issuance of Facility Operating Licenses, and Opportunity for Hearing."

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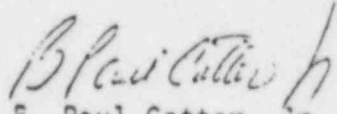
2502

The Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Herbert Grossman, Alternate Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Walter H. Jordan
881 W. Outer Drive
Oak Ridge, Tennessee 37830


S. Paul Cotter, Jr.
Chief Administrative
Judge
Atomic Safety and Licensing
Board Panel

Issued at Bethesda, Maryland,
this 30th day of March, 1984.



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

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FROM:

SEN. LLOYD BENTSEN

DUE: 12/07/84

EDO CONTROL: 000130
DOC DT: 11/15/84
FINAL REPLY:

TO:

KAMMERER

FOR SIGNATURE OF:

** GREEN **

SECY NO: 84-2001

EXECUTIVE DIRECTOR

DESC:

ROUTING:

ENCLOSES LTR FM HAYDEN G. HABY, JR. RE CONCERNS
ABOUT DELAYS IN COMANCHE PEAK LICENSING PROCESS

RMARTIN
GCUNNINGHAM

ASSIGNED TO: NRR
CONTACT: DENTON

DATE: 11/21/84

SPECIAL INSTRUCTIONS OR REMARKS:

REPLY TO AUSTIN, TEXAS OFFICE

Received NRR: 11/23/84
contact: Eisenhut

cc: Case/Denton
PPAS

Novak
Youngblood

CORRESPONDENCE CONTROL TICKET

Sen Lloyd Bentsen

NUMBER: 84-2001

LOGGING DATE: 11/20/84

OFFICE OF THE SECRETARY

ACTION OFFICE:

EDO

AUTHOR:

Sen Lloyd Bentsen, Const Ref

AFFILIATION:

Hayden G. Haby

LETTER DATE: _____

11/15/84

FILE CODE:

ADDRESSEE:

OCA

SUBJECT:

Expresses concern about the delays in the Comanche
Peake lic process

ACTION:

Direct Reply...Suspense...Dec 3

DISTRIBUTION:

OCA to Ack

SPECIAL HANDLING:

None

SIGNATURE DATE:

FOR THE COMMISSION: Billie

RECEIVED

Date... 11-21-84
Time... 1:30 P