

NOTATION VOTE

RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION  
FROM: COMMISSIONER ASSELSTINE  
SUBJECT: SECY-83-249 - \_OCONEE UNIT NO. 3 - SPENT FUEL POOL  
EXPANSION

APPROVED \_\_\_\_\_ DISAPPROVED   /   ABSTAIN \_\_\_\_\_  
NOT PARTICIPATING \_\_\_\_\_ REQUEST DISCUSSION \_\_\_\_\_

COMMENTS:

*James R. Asselstine*

SIGNATURE

9-12-83

DATE

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PDR FOIA  
BELL84-148 PDR

SECRETARIAT NOTE: PLEASE ALSO RESPOND TO AND/OR COMMENT ON OGC/OPE  
MEMORANDUM IF ONE HAS BEEN ISSUED ON THIS PAPER.

STATEMENT BY COMMISSIONER JAMES K. ASSELSTINE

FEBRUARY 23, 1984

Mr. Chairman, I would like to make a few comments on the need to extend the Commission's authority to issue temporary operating licenses, the Commission's review of the NRC staff's no significant hazards consideration determination pertaining to steam generator repairs at Three Mile Island Unit 1, and nuclear powerplant licensing reform legislation.

In the past, I have supported an extension through December 31, 1984 of the Commission's authority in section 192 of the Atomic Energy Act to issue temporary operating licenses for nuclear powerplants. However, I have now concluded that an extension of this authority would be unwise. I have reached this conclusion for two reasons. First, there is no reliable evidence showing that the operation of any plant will be unnecessarily delayed due to the hearing process. Thus, there is no demonstrated need for the provision. Second, there are strong public policy reasons which weigh against extending the temporary operating license provision in the absence of a compelling showing that this authority is actually needed.

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In preparing testimony for Congressional budget hearings, the NRC staff identified four plants -- Shoreham, Catawba 1, Commanche Peak 1, and Limerick 1 -- for which, based upon the applicants' current estimates of construction completion, there existed some potential for licensing delay. Of those four, three plants -- Shoreham, Catawba and Commanche Peak -- have diesel generators manufactured by Transamerica DeLaval, Ltd. Based upon recent information indicating serious concerns about the reliability of TDL diesel generators, the NRC staff has already announced that it will not issue an operating license for any plant with TDL diesel generators until these concerns have been resolved. Given this action, it appears highly unlikely that any of these three plants will be ready to operate before the completion of the ongoing licensing hearings. As for the fourth plant, Limerick, the NRC staff's estimate for construction completion indicates that this plant will not be ready to operate prior to the scheduled completion of the hearing in that case.

In evaluating the reliability of applicants' present construction completion estimates, it is also instructive to look at how accurate previous utility construction completion estimates have been. A comparison of the NRC's first report to Congress on licensing and construction schedules in November 1980 with our most recent report last month shows that the applicants' construction completion estimates have been extremely unrealistic. For all the plants listed, construction completion dates have now slipped a total of at least 730 months. Of the 10 plants scheduled to be completed in 1981, only one was completed in that year. Of the 11 plants scheduled to be completed in 1982, only two were

completed in that year. And of the 11 plants originally scheduled to be completed in 1983, only one was actually completed last year. Taken together, this information shows that there is not now any reliable evidence that an extension of the Commission's temporary operating license authority is needed.

My three colleagues who continue to support an extension of the temporary operating license provision argue that even if one cannot now identify any plant that requires a TOL, the authority to issue a temporary operating license is a useful safety valve to deal with unforeseen cases should they arise. This argument presumes that there are no real disadvantages to the temporary operating license authority. In that regard, I see a serious potential disadvantage to the issuance of a temporary operating license prior to the completion of the operating license hearing. As the recent decision by our Licensing Board in the Byron proceeding demonstrated, the licensing hearing can bring to light safety issues that are sufficiently serious to lead the Board to conclude that the operating license cannot be issued. Yet that decision would occur after the time when a temporary operating license would be issued and after the plant would have begun operation. Indeed, at one point last year the Byron plant was mentioned as a possible candidate for a temporary operating license. This potential that a plant could begin operation before a significant safety issue is resolved is, in my view, a serious disadvantage to the temporary operating license provision.

Finally, my three colleagues who support extension of the TOL provision have lost sight of the fact that the temporary operating license authority was always envisioned as an interim solution to what was perceived at the time as an immediate threat to the operation of some dozen nuclear powerplants -- a threat, by the way, that never materialized. This interim authority was never intended to serve as a substitute for longer-term measures such as the allocation of staff effort to licensing reviews and improved management of the hearing process that were needed to minimize unnecessary licensing delays. It is important to recognize that the Commission has followed through with these necessary long-term measures by reallocating staff resources to licensing reviews over the past two years and by establishing advisory schedules for the conduct of operating license hearings. Moreover, our Licensing Boards have done an excellent job in carefully managing these hearings to assure that they are completed in an expeditious and yet fair manner. I believe that these longer-term measures will continue to be effective in minimizing any unnecessary licensing delays for the plants still under construction. Given the absence of any compelling showing that the operation of any plant will be substantially delayed without the TOL authority, the effectiveness of the longer-term measures already adopted by the Commission and the potential risk that a temporary operating license would permit the operation of a plant with significant unresolved safety questions, I cannot support a request to extend the Commission's temporary operating license authority.

On the subject of the Commission's review of the NRC staff's no significant hazards consideration determination for the TMI-1 steam generator

repairs, the Commission is now deadlocked, with two Commissioners concluding that the staff's proposed determination is inconsistent with the Sholly amendment and two Commissioners concluding that the staff's determination is appropriate. The fifth Commissioner has decided that a Commission decision on the appropriateness of the staff's determination is not necessary at this time. The central question is whether the staff's implementation of the Commission's Sholly regulations is consistent with the statute and its legislative history. In view of the fact that the NRC staff is continuing to apply its interpretation of the Sholly regulations in other cases and the Commission is unable to provide guidance to the staff on the appropriateness of the staff's interpretation, the Committee may want to consider the need for additional guidance to the Commission, as part of action on the pending NRC authorization bill, on the intended scope of the Sholly amendment.

On the subject of nuclear powerplant licensing reform, I continue to believe that legislation would be helpful in developing the necessary regulatory framework for the ongoing efforts of several reactor manufacturers to develop more complete standardized plant designs. The recent experience with the construction of the St. Lucie 2 plant in Florida and the three-unit Palo Verde plant in Arizona, which both represent a form of standardization, indicates that the use of more standardized plant designs can have significant benefits in assuring that plants are constructed properly and within realistic cost and schedule estimates. Some provisions of the NRC and DOE legislative proposals that are less directly related to the use of standardized designs, such as backfitting restrictions, the elimination of certain hearing rights, modifications

to adjudicatory hearing procedures, limitations on the role of licensing hearings and attempts to define safety-cost trade-offs, have proven to be controversial. At the same time, there appears to be more of a consensus in favor of other provisions more directly supportive of standardization, such as the authority to issue site permits, standardized design approvals and combined construction permits and operating licenses, together with provisions to assure an opportunity for a hearing on each safety, security and environmental issue at the earliest possible stage in the licensing process.

Given the potential for consensus on these elements and their benefits in encouraging further standardization, I would suggest that the Committee consider a more limited bill that focuses on the provisions most directly related to the standardization concept.

Finally, Mr. Chairman, I feel that I have to make a few comments on the Commission's response to your question regarding the Grace Commission's recommendations. In that response, three Commissioners expressed the view that the Chairman and the Executive Director for Operations should be given greater authority, and two Commissioners recommended Congressional action to replace the Commission with a single Administrator. On the subject of a single Administrator, I continue to believe that the Congress struck the right balance in adopting Reorganization Plan No. 1. That Plan gave the Chairman exclusive authority for responding to emergency situations as well as administrative responsibility for the agency's day-to-day operations, but it preserved the authority of the five Commissioners for policy

formulation, rulemaking, orders and adjudication, and for the appointment and removal of a few senior staff members in the agency -- on the order of 10 people, excluding the Boards and the ACRS. In adopting that Plan, the Congress recognized the value of having significant nuclear regulation policy matters and decisions considered by a small collegial body composed of members with a range of perspectives and experience, rather than by a single individual. I think the Congress also recognized that if the collegial system is to work effectively, the senior NRC staff must be accountable and responsive to the policy directions of the Commission, and all Commissioners must have access to the information they need to carry out their responsibilities. Although a single Administrator would probably be more efficient, I think there is a benefit in having the significant and often complex, not to mention contentious, policy issues involved in nuclear regulation aired and debated by a collegial group with differing perspectives and experience.

In terms of expanded powers for the Chairman and the Executive Director, I fail to see what additional authority is needed or advisable in improving the Commission's operation. The Chairman already has the authority to hire and fire all but a small handful of the 3,400 agency employees, and he has interpreted the Reorganization Plan as giving him exclusive final authority to award bonuses for SES employees. These are powerful management tools. Moreover, the Chairman has interpreted the Reorganization Plan as giving him the authority to direct the development of major policy initiatives by the staff without prior consultation with the other Commissioners. Even the present allocation

of authority between the Commission and the Chairman has resulted in a few instances in which policy and rulemaking initiatives were either begun or stopped without a full discussion among the Commissioners. It seems to me that any further expansion of the powers of the Chairman and the EDO would seriously undermine the five Commissioners' policy making responsibilities and, for all practical purposes, would convert the agency to a single Administrator form of operation.