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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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MISSISSIPPI POWER & LIGHT COMPANY
MIDDLE SOUTH ENERGY, INC., AND
SOUTH MISSISSIPPI ELECTRIC POWER
ASSOCIATION

(Grand Gulf Nuclear Station, Unit 1)

Docket No. 50-416

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ORDER

(CLI-84-19)

On June 16, 1982, the Nuclear Regulatory Commission (NRC or Commission) issued a Facility Operating License authorizing operation of the Grand Gulf Nuclear Station, Unit 1, at up to 5% power. On August 31, 1984 the NRC authorized that facility to operate at full power by issuing what was entitled "Amendment No. 13 to Facility Operating License". Jacksonians United for Livable Energy Policies (JULEP) on October 1, 1984 challenged issuance of that amendment in the United States Court of Appeals for the District of Columbia Circuit. That challenge has brought to the Commission's attention the semantic problem created by labelling the authorization to operate at full power as a "license amendment."

Mississippi Power and Light Co. applied for an operating license in 1978, and the NRC at that time noticed the application and the

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opportunity for interested persons to request a hearing. 43 Fed. Reg. 32903 (July 28, 1978). The Commission in authorizing operation at full power did not intend to issue a license amendment which could be viewed as creating new hearing rights under Section 189a of the Atomic Energy Act. Rather, the Commission in authorizing full-power operation intended no more than final issuance of the operating license originally requested and noticed in 1978. To avoid potential confusion in this area, the Commission has decided to direct the NRC staff to replace the prior document entitled "Amendment No. 13 to Facility Operating License" with a separate full-power operating license.¹ This order explains the basis for the Commission's action.

I. Background

The NRC published notice of receipt of an application from Mississippi Power and Light Company for full-power operating licenses for the Grand Gulf Nuclear Station, Units 1 and 2, on July 28, 1978. In that notice, the Commission stated that it would consider issuance of the operating licenses upon, among other things, "a finding by the Commission that the application for the facility licenses, as amended, complies with the requirements of the Atomic Energy Act of 1954 ... and the Commission's regulations ...," and that "any person whose interest

¹The full-power license changes none of the technical requirements in the amended low-power license, except that it incorporates the regulatory exemptions which were granted separately. See note 7, *infra*.

may be affected by this proceeding may file a petition for leave to intervene." 43 Fed. Reg. 32903, 32904 (emphasis added).

No hearing was requested, and the application was processed in accord with the procedures for handling uncontested cases. The NRC staff reviewed the application and provided regulatory guidance to the applicant. Moreover, necessary changes were made to the application to ensure that the regulatory requirements were met. On June 16, 1982, the NRC determined that the necessary requirements for low-power operation had been satisfied, and accordingly issued Facility Operating License NPF-13, authorizing operation of Unit 1 up to and including 5% of full power (the so-called "low power" license). The NRC at the time it issued that license was still reviewing the application for operation above 5% of power, i.e., the uncontested proceeding initiated by the original application was still underway.

After receiving this low-power license the licensee commenced fuel loading and achieved initial criticality in August, 1982. Numerous problems, including discrepancies in the surveillance procedures and technical specifications, were subsequently identified. This led to a series of inspections and reviews extending over a period of two years. See DD-84-21, 20 NRC ____ (1984), for a general background discussion of these events. It became apparent during this time period that changes to the low-power license were required.² Some of those changes were

²The low-power license was not suspended or revoked during this time period, although the plant remained shut down for much of the time.

required solely to continue operation and testing at low power, while others were required for later full-power operation. The NRC determined that those changes required solely for low-power operation were in fact amendments to the existing low-power license that required notice and an opportunity for hearing under Section 189 of the Atomic Energy Act.³ However, those required only for later full-power operation were considered to be changes to the original application, and as such covered by the 1978 notice.⁴ Hence, those latter changes, although termed

³Two amendments were noticed. Specifically, License Amendment 10 involved substantive changes to the technical specifications to redefine the operability requirements for high pressure core spray, to reflect a post-low-power license design change on RHR jockey pumps, and to permit one-time exceptions to certain surveillance requirements so that the plant could start up and operate at low power before performing certain required tests. These changes were necessary to permit restart and operation under the low-power license.

License Amendment 12 involved technical specification changes which were simply corrections of errors, changes for nomenclature consistency, and changes to conform erroneous technical specifications to the approved facility design. In retrospect, these changes were encompassed by the original full-power operating license application notice, and this amendment need not have been noticed.

⁴Four amendments were not noticed because they related to the full-power application. Specifically, Amendments 7, 8, and 9 involved simple corrections to typographical errors, changes to make nomenclature consistent, and changes to conform erroneous technical specifications to the actual facilities' design as proposed in the operating license application and as reviewed and approved by the NRC staff. These changes to correct inadvertent and unintended errors or ambiguities in the license were covered by the original 1978 notice.

Amendment 11 modified a license condition involving control room leakage so as to approve an initial control room leakage test, but required further testing and analysis to support or establish a proper allowable control room leak rate for operation under a full-power

[Footnote Continued]

"license amendments" and made to the low-power license, rather than the full-power application, were not noticed.⁵

The Commission on July 31, 1984 determined that Mississippi Power and Light's application for a full-power license met the applicable statutory and regulatory requirements, and therefore authorized issuance of a full-power license. Since a low-power license had been issued two years earlier, however, the NRC followed the earlier pattern established in this case and amended that low-power license to authorize full-power operation, rather than issuing a separate full-power license. It is that act which is the focus of this order and to which the Commission will now turn.

II. Authorization to Operate at Full Power

It is apparent from the above discussion that the Commission's action in authorizing full-power operation did no more than culminate the process begun on July 28, 1978 by issuance of the notice of receipt of an operating license application (43 Fed. Reg. 32903). That notice

[Footnote Continued]

license. Because this modified license condition and the information required by it resulted from, was a part of, and was necessary for completion of, the review for a full-power license, it was encompassed by the original 1978 notice.

⁵ Amendments 1-6 to the low-power license were issued prior to the enactment of the notice requirements imposed by the Sholly Amendments of the Atomic Energy Act. In accordance with the practices in effect at the time, since the amendments involved "no significant hazards consideration" they were issued without pre-notice and without regard to whether they were required for low-power or full-power operation.

had informed all interested persons that the Commission would consider issuance of a full-power operating license if it found that the application, as amended in the review process, complied with the statutory and regulatory requirements. Hence interested persons were on notice that the final license would differ from the original application, and changes to the application did not create new hearing rights.

The Commission, once it determined the regulatory requirements had been met, could, therefore, have granted the application as amended simply by issuing a full-power license. Indeed, issuing a separate full-power license would have been consistent with past Commission practice in this area. For the two years following the Three Mile Island accident, the Commission, rather than amending existing low-power licenses, issued separate full-power licenses. However, after several such cases it was decided that there was no need to issue two separate licenses. Accordingly, the Commission for the past few years has simply "amended" the existing license by dropping the low-power limitation and authorizing full-power operation.

In the present case, in accordance with that process, once the review of the application for a full-power license was completed, the Commission dropped the low-power limitation and authorized full-power operation by "amending" the existing low-power license. However, in neither this case nor any other similar case was there a need for, or an intent to, issue a license amendment as such which might arguably create new hearing rights under Section 189. All that was necessary, and all that was intended, was to end the ongoing uncontested proceeding for a

full-power license by granting the application, as amended, for that license.

The Commission now recognizes that the prior practice of first issuing a low-power license and then a separate full-power license may have been the better and less confusing practice. While the language of Section 189a requires an appropriate notice and opportunity for hearing on an actual amendment to a power reactor operating license, designation of the authorization to operate at full power as a "license amendment" could needlessly create confusion by giving the erroneous impression that new hearing rights were created when full-power operation was authorized. To avoid any such confusion, the Commission has decided to direct the NRC staff to issue the full-power license for Grand Gulf, Unit 1, as an entirely separate matter from issuance of the low-power license. This should make it clear that the authorization to operate at full power is simply the culmination of the uncontested proceeding begun and noticed in 1978.⁶ As a generic matter the Commission intends to develop a policy statement to further clarify the treatment to be given the relationship between low-power and full-power licenses.

The Commission therefore directs the NRC staff to replace Amendment No. 13 to the low-power license with a separate full-power license containing the same terms and conditions as Amendment 13 and the

⁶The same rationale applies to the earlier amendments which were not noticed because they were part of the full-power application. Those amendments are now part of the full-power operating license, however, and hence need not be further addressed.

existing underlying license.⁷ The separate full-power license, upon issuance, will supersede the low-power license.

Commissioners Roberts and Zech dissent from this decision. Their dissenting views are attached.

It is so ORDERED



Samuel J. Chilk
 SAMUEL J. CHILK
 Secretary of the Commission

Dated at Washington, DC,
 this ^{re}25 day of October, 1984.

⁷The Commission, on the same day it issued Amendment No. 13, granted Mississippi Power & Light Co. several exemptions from regulatory requirements. 49 Fed. Reg. 35448 (September 7, 1984). Those exemptions were also granted as part of the review of the initial application for a full-power license. The NRC staff, having already made the necessary findings justifying the grant of these exemptions, should therefore simply incorporate those exemptions into the full-power license, and issuance of that license will supersede the order granting the exemptions.

The Commission notes in this regard that it recently issued a decision which departed from past staff practice both with regard to the standards for granting exemptions and the circumstances where exemptions are required. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, 19 NRC 1154 (1984). However, the Commission subsequently stated that the Shoreham decision for the near term was only to apply to the particular circumstances of that case, and that the NRC staff should develop a comprehensive exemption policy as a generic matter. Thus while this generic reexamination is underway, the staff should continue its practice of granting exemptions only after making the findings required by 10 CFR 50.12 and documenting the information supporting its determination.

DISSENTING VIEWS OF COMMISSIONERS ROBERTS AND ZECH

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We have disapproved issuance of this Order only because we view the action that it directs the Staff to take to be totally unnecessary. Issuance of a replacement license that does not alter, in any way, the licensee's authority to operate the facility is to assign greater importance to form than to regulatory substance. There is absolutely nothing involved in this Order which even remotely relates to the protection of the public health and safety.

The full power operating authorization which was issued on August 31, 1984 was the culmination of the overall licensing action which was initiated by a notice of opportunity for hearing given on July 28, 1978 (43 F.R. 32903). Neither JULEP nor any other person sought to invoke in a timely manner the administrative remedies which were provided by that notice.

Issuance of the full power authorization under these circumstances, regardless of the form of the authorization, did not provide, and need not have provided, an additional opportunity for hearing.