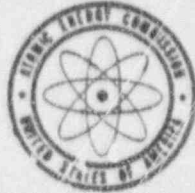


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November 18, 1970



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SECY-R 82

INFORMATION MEETING ITEM

IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF
1969 IN AEC REGULATORY ACTIVITIES

Note by the Secretary

The General Counsel has requested that his attached memorandum of November 18, 1970, with enclosure, be circulated for consideration by the Commission at the Information Meeting scheduled for Monday, November 23, 1970.

W. B. McCool

Secretary of the Commission

* RELEASED TO THE PDR *
* 2-7-92 JSW *
* date initials *

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| Commissioner Larson | 1 | Asst. GM for Admn. | 1 |
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UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

November 18, 1970

Chairman Seaborg
Commissioner Ramey
Commissioner Johnson
Commissioner Thompson
Commissioner Larson

SUBJECT: IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL
POLICY ACT OF 1969 IN AEC REGULATORY
ACTIVITIES

In accordance with the Commission's guidance at the Information Meeting on Friday, November 13, I have drafted further revisions to the Commission's policy statement proposed in Secy R-72 (see also General Counsel's memorandum of November 10, 1970). The further revisions are attached as follows:

Appendix A is a revision of Appendix A of my memorandum of November 10 to incorporate the rearrangement and changes suggested by Commissioner Ramey and other Commissioners.

Appendix B is a revision of Appendix B of my November 10 memorandum incorporating a change suggested by Commissioner Thompson.

Appendix C, suggested by Commissioner Ramey, is new material pointing up the need for avoiding delay in the interest of meeting the urgent needs for electric power in the near future.

I would like to schedule this matter for discussion at the Information Meeting on Monday, November 23, 1970.

Encl.
As noted

Joseph F. Hennessey
Joseph F. Hennessey
General Counsel

APPENDIX A - REVISIONS OF PARAGRAPH 1
THROUGH 6 (PAGES 10 to 12 of SECY-R 72)

The significant new or amended provisions of Appendix D as adopted by the Commission are:

1. The Commission believes that the preservation of environmental values can best be accomplished through the establishing of environmental quality standards and requirements by appropriate Federal, State and regional agencies having responsibility for environmental protection. In the case of water quality, the Water Quality Improvement Act of 1970 has established a system of Federally approved state standards for water quality and a requirement that Federal licensing agencies receive from the appropriate Federal or State authority a certification that there is reasonable assurance that the license applicant will comply with applicable water quality standards. The Commission urges the appropriate agencies to proceed promptly to establish standards and requirements for other aspects of environmental quality.
2. In a proceeding for the issuance of a construction permit or an operating license for a nuclear power reactor or fuel reprocessing plant, any party to the

proceeding may raise as an issue whether the issuance of the permit or license would be likely to result in a significant, adverse effect on the environment. If such a result were indicated, in accordance with the declaration of national policy expressed in the National Environmental Policy Act of 1969, consideration will be given to the need for the imposition of requirements for the preservation of environmental values consistent with other essential considerations of national policy, including the need to meet on a timely basis the growing national requirements for electric power. With respect to those aspects of environmental quality for which such standards and requirements have been established, proof that the applicant is equipped to observe and agrees to observe such standards and requirements will be considered a satisfactory showing that there will not be a significant adverse effect on the environment. Certification by the appropriate agency that there is reasonable assurance that the applicant for the permit or license will observe such standards and requirements will be considered dispositive for this purpose.

In any event, there will be incorporated in construction permits and operating licenses a condition to the effect that the licensee shall observe such standards and requirements for the protection of the environment as are validly imposed pursuant to authority established under Federal and State law and as are determined by the Commission to be applicable to the facility that is subject to the licensing action involved.

3. In order to provide an orderly period of transition in the conduct of the Commission's regulatory proceedings and to avoid unreasonable delays in the construction and operation of nuclear power plants urgently needed to meet the national requirements for electric power, the issues described in paragraph 1 above may be raised only in proceedings in which the notice of hearing in the proceedings is published on or after (a date 60 days after the effective date of

covered by section 21 of the Federal Water Pollution Control Act.* If any party raised any issue as described in paragraph 2 above, the applicant's Environmental Report and the Detailed Statement would be offered in evidence.

5. If no party to such a proceeding, including AEC staff, raised any issue as described in paragraph 2 above, those issues would not be considered by the atomic safety and licensing board. Under such circumstances, although the Applicant's Environmental Report, comments thereon, and the Detailed Statement will accompany the application through the Commission's review processes, they will not be received in evidence, and neither their form nor content, nor

Under section 21(b), the Commission is generally prohibited from issuing a construction permit or operating license for a facility discharging effluents into navigable waters without having received a certificate from the State or interstate water pollution control agency or the Secretary of the Interior, as appropriate, that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards. In addition, as noted in paragraph 7e, the AEC will include a condition in construction permits and operating licenses for power reactors and fuel reprocessing plants to the effect that the licensee shall comply with all applicable requirements of section 21(b).

[REDACTED]

the procedures by which they were developed, will be considered by the board.

6. If any of the issues described in paragraph 2 above were properly raised by a party to the proceeding, the atomic safety and licensing board would make findings of fact on and resolve the matters in controversy among the parties with regard to those issues. Depending on the resolution of those issues, the permit or license could be granted, denied, or appropriately conditioned to protect environmental values.

APPENDIX A - REVISIONS OF PARAGRAPH 10

THROUGH 12 (PAGES 30 THROUGH 32 OF SECY-R 72)

10. The Commission believes that the preservation of environmental values can best be accomplished through the establishing of environmental quality standards and requirements by appropriate Federal, State and regional agencies having responsibility for environmental protection. The Commission urges the appropriate agencies to proceed promptly to establish such standards and requirements.

11. (a) Any party to a proceeding for the issuance of a construction permit or an operating license for a nuclear power reactor or a fuel reprocessing plant may raise as an issue in the proceeding whether the issuance of the permit or license would be likely to result in a significant, adverse effect on the environment. If such a result were indicated, in accordance with the declaration of national policy expressed in the National Environmental Policy Act of 1969, consideration will be given to the need for the imposition of

requirements for the preservation of environmental values consistent with other essential considerations of national policy, including the need to meet on a timely basis the growing national requirements for electric power. The above-described issues shall not be construed as including (a) radiological effects, since radiological effects are considered pursuant to other provisions of this part or (b) matters of water quality covered by section 21(b) of the Federal Water Pollution Control Act. This paragraph applies only to proceedings in which the notice of hearing in the proceeding is published on or after (a date 60 days after the effective date of the rule).

(b) With respect to those aspects of environmental quality for which standards and requirements have been established by authorized Federal, State and regional agencies, proof that the applicant is equipped to observe and agrees to observe such standards and requirements will be considered a satisfactory showing that there will not be a significant adverse effect on the environment. Certification by the appropriate agency that there is reasonable assurance that the applicant for the permit or license

will observe such standards and requirements will be considered dispositive for this purpose.

(c) In any event, there will be incorporated in construction permits and operating licenses a condition to the effect that the licensee shall observe such standards and requirements for the protection of the environment as are validly imposed pursuant to authority established under Federal and State law and as are determined by the Commission to be applicable to the facility that is subject to the licensing action involved.

12. If any party to a proceeding for the issuance of a construction permit or an operating license for a nuclear power reactor or a fuel reprocessing plant raises any issue described in paragraph 11, the Applicant's Environmental Report and the Detailed Statement will be offered in evidence. The atomic safety and licensing board will make findings of fact on, and resolve, the matters in controversy among the parties with regard to those issues. Depending on the resolution of those issues, the permit or license may be granted, denied or appropriately conditioned to protect environmental values.

APPENDIX B

(COMMISSIONER THOMPSON'S ALTERNATIVE)

1. In a proceeding for the issuance of a construction permit or an operating license for a nuclear power reactor or fuel reprocessing plant, any party to the proceeding may raise as an issue whether there is reasonable assurance that the applicant for the permit or license will observe such standards and requirements for the protection of the environment as are validly imposed pursuant to authority established under Federal and State law and as are determined by the Commission to be applicable to the facility that is subject to the licensing action involved. This issue would be considered in the context of whether the lack of such reasonable assurance would be likely to result in a significant, adverse effect on the environment. If such a result were determined to be likely, it would be balanced against the public interest in the utilization of atomic energy, including the need for an adequate supply of electric power. In any event, a condition to the effect that the licensee shall observe such standards and requirements will be incorporated in the construction permit and operating license

2. The Commission believes that the preservation of environmental values can best be accomplished through the establishing of environmental quality standards and requirements by appropriate Federal, State and regional agencies having responsibility for environmental protection. With respect to those aspects of environmental quality for which such standards and requirements have not been established, the Commission has concluded (1) that it is impracticable to evaluate the impact of nuclear facilities with respect to any such unquantified environmental amenities and values, and (2) that the Commission is not able to establish in a timely and orderly manner standards against which to judge the acceptability of nuclear plants in such diverse areas as noise abatement, esthetics, recreation and similar amenities. The Commission recognizes the need to have such standards set, and encourages the appropriate State, Regional or Federal agencies to move forthwith to establish such standards. Until such standards are set, and in the interests of orderly procedure, the Commission will not consider as an issue in any licensing proceeding the environmental impact of the facility with respect to

any environmental amenities and values for which appropriate standards or requirements have not been established under applicable Federal or State law and will not deny or condition any construction or operating license on the basis of environmental amenities and values as to which no applicable Federal or State standards or requirements have been established. In order to assure that Commission licensees will comply with any applicable Federal and State standards and requirements that may be established hereafter, there will be incorporated in construction permits and operating licenses a condition to the effect that the licensee shall observe such standards and requirements for the protection of the environment as are validly imposed pursuant to authority established under Federal and State law and as are determined by the Commission to be applicable to the facility that is subject to the licensing action involved.

Note: Corresponding changes would be required on pages 30 through 32.

APPENDIX C

FOR INSERTION ON PAGE 18 of SECYR 72 (before present paragraph beginning with "Pursuant to the National Environmental Policy Act ***)

In its consideration of Appendix D, the Commission has recognized the public interest in protecting the environment as well as the public interest in avoiding unreasonable delay in meeting the growing national need for electric power through atomic energy.

The public is demanding substantially more electric power, and it is expecting the power to be available, without shortages or blackouts. Electric power use in the United States has been doubling about every ten years. If prevailing growth pattern and pricing policies continue, electric power capacity may need to triple or quadruple in the next two decades. Meanwhile during the coming winter and summer and for the next few years, there is a real electric power and fuel crisis in this country.*

Various authoritative statements and reports have stressed that the urgent near term need for electric power requires that delays be held to an absolute minimum. Also reports looking to the implementation of improved institutional arrangements on siting of power plants recommend procedures for expediting the process consistent with protection of the environment. Thus

* (Nassikas and McCracken Committee)

in its Basic Findings, the Report "Electric Power and the Environment" in which all of the Federal agencies responsible for environmental and power programs participated, stated:

"New public agencies and review procedures must take into account the positive necessity for expediting the decision-making process and avoiding undue delays in order to provide adequate electric power on reasonable schedules while protecting the environment."

The Commission believes that revised Appendix D takes into account the necessity for avoiding undue delays in order to provide adequate electric power and that it reflects a balanced approach toward carrying out the Commission's new environmental-protection responsibilities under the National Environmental Policy Act of 1969. Its main concern here has been to find out and strike a reasonable balance of those considerations in the overall public interest, and expects that revised Appendix D will be implemented to that end.

OR INSERTION ON PAGE 21 of R-72 (before
present paragraph beginning with "Pending
(b)(1)")

The Commission expressly recognizes the positive necessity for expediting the decision-making process and avoiding undue delays in order to provide adequate electric power on reasonable schedules while at the same time protecting the quality of the environment. It expects that its responsibilities under the National Environmental Policy Act of 1969, as set out below, will be carried out in a manner consistent with this policy in the overall public interest.