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ATOMIC ENERGY COMMISSION

AMENDMENTS TO PARTS 2, 50 AND 115 TO IMPLEMENT RECOMMENDATIONS OF THE SECOND REGULATORY REVIEW PANEL

Report to the Commission by the
Director of Regulation and the
Chairman of the Atomic Safety and
Licensing Board Panel

THE PROBLEM

1. To consider publication in effective form of (a) amendments to Part 2, "Rules of Practice", including amendments to the Statement of General Policy* contained in Part 2 ("Statement of General Policy") and Parts 50 and 115, which implement recommendations of the Second Regulatory Review Panel, and (b) certain other perfecting and clarifying amendments to the Statement of General Policy.

BACKGROUND AND SUMMARY

2. The First Regulatory Review Panel, appointed by the Commission to study (a) the programs and procedures for licensing and regulation of reactors and (b) the decision-making process in the Commission's regulatory program, submitted a report dated July 14, 1965,** containing recommendations directed particularly to the conduct of uncontested licensing proceedings at the construction permit stage. Those recommendations have been largely carried out, most of them by amendments to Part 2, including the adoption of the Statement of General Policy, which

*Statement of General Policy: Conduct of Proceedings for the Issuance of Construction Permits for Production and Utilization Facilities for Which a Hearing is Required Under Section 189 a. of the Atomic Energy Act of 1954, as Amended.

**In the Record, Office of the Secretary.

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were published in effective form on September 30, 1966. A second Regulatory Review Panel was appointed on April 4, 1966, to study contested cases involving applications to construct and operate nuclear facilities. That Panel's report was submitted on June 15, 1967.*

3. At Regulatory Meeting 261 on November 1, 1967, the Commission approved publication of proposed amendments to 10 CFR Parts 2, 50 and 115, as set forth in Appendix "A" to AEC-R 4/46. The proposed amendments, which were designed to implement recommendations of the Second Regulatory Review Panel, were published in the Federal Register (32 F.R. 16050) on November 22, 1967, allowing 60 days for public comment. The amendments would:

a. amend §2.714(a) of Part 2 (which now requires a petitioner for leave to intervene in a Commission proceeding to set forth, among other things, his contentions) (i) to require the petitioner's contentions to be reasonably specific, (ii) to provide that petitions which set forth contentions relating only to matters outside the jurisdiction of the Commission will be denied, and (iii) to require the petition to be filed within such time as may be specified in the notice of hearing, or as permitted by the presiding officer;

b. amend §2.721(b) of Part 2 to provide for the appointment of alternates for atomic safety and licensing boards who are qualified in the conduct of administrative proceedings; and

c. reflect certain recommendations of the Second Regulatory Review Panel, together with certain other perfecting or clarifying changes, in the Statement of General Policy.

4. At the same meeting, the Commission approved a public announcement which described a general time table of events before mandatory public hearings are held which would be

*In the Record, Office of the Secretary. A summary of this report is contained in a Director of Regulation/Chairman, AS&LHP memorandum to the Commission, dated August 2, 1967, also in the Record, Office of the Secretary.

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followed, whenever practicable, under the revised procedures when the proposed amendments were adopted in effective form.

5. All interested persons were invited to submit written comments and suggestions for consideration in connection with the proposed amendments within 60 days after publication of the notice of proposed rule making in the Federal Register. Comments were received from Senator Aiken; Congressman Dingell; Katharine Schneider (through Senator Hatfield); North Carolina Municipally Owned Electric Systems Association; John Pegors, Acting Chairman of the Citizens Committee to Preserve the Homeowners from a Nuclear Catastrophe at Monticello, Minnesota; and the law firm of LeBoeuf, Lamb, Leiby & MacRae. Senators Aiken and Hatfield and Congressman Dingell have been answered in separate letters.* An analysis of the comments and suggested disposition are attached as Appendix "C".

6. We have concluded that an editorial suggestion made by LeBoeuf, Lamb, Leiby & MacRae, discussed in Appendix "C", should be adopted. That change and minor changes for purposes of clarification appear in the comparative text set out in Appendix "A". A change in the description of the documents that will be available at an office near the site of the proposed facility to include the applicant's summary has also been made (Appendix A of Part 2, Section I(a)). Otherwise, the text of the amendments in Appendix "A" is the same as the text of the proposed amendments published November 22, 1967. The revised standard form of notice of hearing (Appendix "B") has also been changed to reflect the change in Section I(a) of Appendix A of Part 2.

*Secretariat Note: Replies to Senator Aiken (AEC-R 4/50) and Congressman Dingell (AEC-R 4/49) were approved by the Commission at Regulatory Information Meeting 271 on January 8, 1968.

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STAFF JUDGMENTS

7. The Office of the General Counsel concurs in the recommendation of this paper. The Office of Congressional Relations concurs in the draft letter to the JCAE. The Division of Public Information prepared the draft public announcement, and concurs in recommendation 8 d. below.

RECOMMENDATION

8. The Director of Regulation and the Chairman of the Atomic Safety and Licensing Board Panel recommend that the Atomic Energy Commission:

a. Approve publication of the amendments to Parts 2, 50 and 115 in the form of Appendix "A", to be effective 30 days after publication in the Federal Register;

b. Note that the Joint Committee on Atomic Energy will be informed of the amendments by letter such as Appendix "D";

c. Note that a public announcement such as Appendix "E" will be issued when the notice of rule making is filed with the Office of the Federal Register; and

d. Note that at such time as the amendments in Appendix "A" become effective, expanded press releases will be issued in licensing hearing cases, when the ACRS report becomes available, giving the public more information concerning the fact that a notice of hearing will be published in the Federal Register and that a public hearing will be held in the vicinity of the proposed facility.

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APPENDIX "A"

TITLE 10 - ATOMIC ENERGY

CHAPTER 1 - ATOMIC ENERGY COMMISSION

PART 2 - RULES OF PRACTICE

PART 50 - LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

PART 115 - PROCEDURES FOR REVIEW OF CERTAIN NUCLEAR REACTORS EXEMPTED FROM LICENSING REQUIREMENTS

Miscellaneous Amendments

On November 22, 1967, the Atomic Energy Commission published in the FEDERAL REGISTER (32 F.R. 16050) proposed amendments of its Rules of Practice, 10 CFR Part 2, including amendments to Appendix A of that part, Statement of General Policy: Conduct of Proceedings for the Issuance of Construction Permits for Production and Utilization Facilities for Which a Hearing is Required Under Section 189 a. of the Atomic Energy Act of 1954, As Amended (Statement of General Policy), and conforming amendments to 10 CFR Part 50, Licensing of Production and Utilization Facilities and 10 CFR Part 115, Procedures for Review of Certain Nuclear Reactors Exempted from Licensing Requirements. The proposed amendments were intended to expedite the Commission's facility licensing procedures in contested cases and clarify certain provisions in existing regulations.

The proposed amendments to Part 2 reflected in part the recommendations made by a three-member Regulatory Review Panel appointed by the Commission to study contested proceedings involving applications to construct and operate nuclear facilities. A contested

proceeding is a proceeding in which there is a controversy between the AEC regulatory staff and the applicant concerning the issuance of the license or any of its terms and conditions, or in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission. The Panel's report was submitted on June 13, 1967.

All interested persons were invited to submit written comments and suggestions for consideration in connection with the proposed amendments within 60 days after publication of the notice of proposed rule making in the FEDERAL REGISTER. After careful consideration of the comments received, the Commission has adopted the amendments which follow. Except for minor and clarifying changes to paragraph (a) of Section I, Preliminary Matters, and paragraph (e) of Section II, Prehearing Conference, of Appendix A of Part 2, the amendments are the same as those set out in the notice of proposed rule making.

Section 2.714(a) of Part 2 now requires a petitioner for leave to intervene in a Commission proceeding to set forth, among other things, his contentions. The amendment of §2.714(a) which follows requires those contentions to be reasonably specific. It also provides that petitions which set forth contentions relating only to matters outside the jurisdiction of the Commission will be

denied. These amendments are designed merely to state more clearly the Commission's long-standing policy of excluding from consideration in licensing hearings matters which are outside the Commission's regulatory jurisdiction. As revised, §2.714(a) also requires the petitioner to be filed within such time as may be specified in the notice of hearing, or as permitted by the presiding officer, and continues to provide that a petition which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time.

Section 2.721(b) of Part 2 has been amended to provide for the appointment of alternates for atomic safety and licensing boards who are qualified in the conduct of administrative proceedings. Section 2.721(b) presently provides for the appointment of technically qualified alternates for the boards.

Certain recommendations of the Regulatory Review Panel, and other perfecting or clarifying changes, are reflected in the amendments to the Statement of General Policy which follow. Those which may be of particular interest are: (1) a provision that pre-hearing conferences will usually be held in the Washington, D.C., area, but that due regard shall be had for the convenience and necessity of the parties or their representatives; (2) a provision recognizing that requests may be made for a separate hearing on the matter of site selection; (3) a provision indicating that it

is desirable for the applicant's summary of the application to discuss the evolution of the proposed reactor design from the design of reactors which have previously been approved or built; (4) a provision encouraging the submission to the atomic safety and licensing board of the applicant's summary of the application, as well as the regulatory staff's safety analysis, at least two weeks prior to the date specified in the notice of hearing for the receipt of petitions for leave to intervene; (5) a provision that atomic safety and licensing boards, in testing the sufficiency of the information contained in the application and in the record, and the adequacy of the regulatory staff's review, to support the proposals of the Director of Regulation in an uncontested proceeding, should be mindful that the applicant, not the regulatory staff, is the proponent of the license; (6) a provision clarifying the point that in contested proceedings, an atomic safety and licensing board may obtain information from the Chairman or Vice Chairman of the Atomic Safety and Licensing Board Panel for the purpose of identifying relevant decisions or statements of Commission policy; and (7) a provision that two members of an atomic safety and licensing board constitute a quorum if one of those members is the member qualified in the conduct of administrative proceedings.

The amendments set out below are a further indication of the Commission's intention to adopt from time to time amendments of

its regulations which experience in the operation of atomic safety and licensing boards might indicate as being necessary or desirable.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 2, 30 and 115, are published as a document subject to codification, to be effective thirty (30) days after publication in the FEDERAL REGISTER.

1. The first sentence of §2.104(a) is amended by inserting "at least" before "thirty (30) days" where it appears. As amended, the first sentence of §2.104(a) reads as follows:*

§2.104 Notice of hearing.

(a) In the case of an application on which a hearing is required by the Act or this Chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the FEDERAL REGISTER as required by law at least fifteen (15) days, and in the case of an application concerning a facility, at least thirty (30) days, prior to the date set for hearing in the notice.

* To indicate the differences between the proposed amendments published for comment and the amendments now recommended for adoption as effective rules, deletions are bracketed and additions are underscored.

2. Paragraph (a) of §2.714 is amended to read as follows:

§2.714 Intervention.

(a) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition under oath or affirmation for leave to intervene not later than the time specified in the notice of hearing, or as permitted by the presiding officer. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner in reasonably specific detail. A petition which sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. A petition for leave to intervene which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time.

3. Paragraph (b) of §2.721 is amended to read as follows:

§2.721 Atomic safety and licensing boards.

* * * * *

(b) The Commission may designate a technically qualified alternate or an alternate qualified in

the conduct of administrative proceedings, or both, for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a member of a board becomes unavailable before the hearing commences, the Chairman of the Atomic Safety and Licensing Board Panel may constitute the technically qualified alternate or the alternate qualified in the conduct of administrative proceedings, as appropriate, as a member of the board by notifying the Commission and the alternate who will, as of the date of such notification, serve as a member of the board.

4. Paragraphs (a) and (b) of Section I of Appendix A to Part 2 are amended to read as follows:

I. Preliminary Matters

(a) A public hearing is announced by the issuance of a notice of hearing signed by the Commission's Secretary, stating the nature of the hearing, its time and place and the issues to be considered. When a hearing is to be held before a board, the notice of hearing will ordinarily designate the chairman and the other members. The time and place of the pre-hearing conference will ordinarily be stated in the

notice of hearing. Subject to the provisions of paragraph (b) below, the prehearing conference will usually be held in the Washington, D.C., area. It is the Commission's policy and practice to hold the evidentiary hearing in the vicinity of the site of the proposed facility. The notice of hearing is published in the FEDERAL REGISTER at least 30 days prior to the date of hearing. In addition, a public announcement is issued by the Commission regarding the date and place of the hearing. The notice of hearing also states the procedures whereby persons may seek to intervene or make a limited appearance, explains the differences between these forms of participation in the proceeding, and states the times and places of the availability, in an appropriate office near the site of the proposed facility, of the notice of hearing, the report of the Advisory Committee on Reactor Safeguards, the applicant's summary of the application, and the staff safety analysis.

(b) In fixing the time and place of the prehearing conference or of any postponed hearing, due regard shall be had for the convenience and necessity

(of the parties or their representatives, as well
as of the board members.

5. Paragraphs (e) and (f) of Section I of Appendix A of Part 2 are redesignated paragraphs (f) and (g), respectively, and a new paragraph (e) is added to read as follows:

I. Preliminary Matters

* * * * *

(e) It is possible that a party may request the Commission to consider the matter of the suitability of the proposed site separately from, and prior to, other questions relating to the effect of the construction and operation of the facility upon the public health and safety and the common defense and security. If the Commission should grant such a request, the notice of hearing or an appropriate amendment thereto will state the time and place of the separate hearing on this question.

6. Paragraphs (b) and (e) of Section II of Appendix A of Part 2 are amended and a new paragraph (f) is added to read as follows:

II. Prehearing Conference

* * * * *

(b) The prehearing conference is usually held approximately two weeks before the opening of the evidentiary hearing. Prehearing conferences are open to the public except under exceptional circumstances involving matters such as those referred to in 10 CFR §2.790(a) and (b) ("company confidential" information; classified information; and certain privileged information not normally a part of the hearing record).

(c) The applicant, the regulatory staff and other parties will ordinarily provide each other and the board with copies of prepared testimony in advance of the hearing. A schedule may be established at the prehearing conference for exchange of prepared testimony. The applicant ordinarily files a summary of his application, including a summary description of the reactor and his evaluation of the considerations important to safety, and the staff files a safety analysis prior to the hearing. These may constitute the testimony of witnesses sworn at the hearing. It is desirable for the applicant's summary statement

to include, as appropriate, a discussion of the evolution of the proposed reactor design, including associated [safeguards] engineered safety features, from the design of reactors which have previously been approved or built. All of these documents and prepared testimony are filed in the Commission's Public Document Room and are available for public inspection.

(f) The conduct of the prehearing conference will be facilitated if the board is provided with the applicant's summary of the application and the staff's safety analysis well in advance of the prehearing conference. Failure of the board to receive those documents at least two weeks prior to the date specified in the notice of hearing for the receipt of petitions for leave to intervene may result in a rescheduling of the prehearing conference and the hearing.

7. Subparagraphs (b)(2), (3) and (4) of Section III of Appendix A of Part 2 are amended to read as follows:

III. The Hearing

* * * * *

(b) Intervention and limited appearances.

(2) The chairman should inquire of those in attendance whether there are any who wish to participate in the hearing by limited appearance.

(3) The board should rule on each request to participate in the hearing on either basis. The Commission's rules require that a petition for intervention be filed not later than the time specified in the notice of hearing. A board has general authority to extend the time for good cause with respect to allowing intervention.

(4) As required by §2.714 of 10 CFR Part 2, a person who wishes to intervene must set forth, in a petition for leave to intervene, his interest in the proceeding, how the interest may be affected by Commission action, and his contentions in reasonably specific detail. After consideration of any answers, the board will rule on the petition. Petitions which set forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. In any

event, the board should not permit enlarging of the issues, or receive evidence from an intervenor, with respect to matters beyond the jurisdiction of the Commission.

8. Subparagraph (c)(7) of Section III of Appendix A of Part 2 is revised to read as follows:

III. The Hearing

* * * * *

(c) * * *

(7) Objections may be made by counsel to any questions or any line of questioning, and should be ruled upon by the board. The board may admit the testimony, may sustain the objection, or may receive the testimony, reserving for later determination the question of admissibility. In passing on objections the board, while not bound to view proffered testimony according to its admissibility under strict application of the rules of evidence in judicial proceedings, should exclude testimony that is clearly irrelevant to issues in the case, or that pertains to matters outside the jurisdiction of the board or the Atomic Energy Commission. Examples of matters which are

considered irrelevant to the issues in the case or outside the jurisdiction of the board or the Atomic Energy Commission include the thermal effects (as opposed to the radiological effects) of the facility operation on the environment; the effect of the construction of the facility on the recreational, economic or political activities of the area near the site; and matters of aesthetics with respect to the proposed construction. Irrelevant material in prepared testimony submitted in advance under §2.713(b) may be subject to a motion to strike under the procedures provided in §2.730.

9. Paragraph (g) of Section III of Appendix A of Part 2 is revised to read as follows:

III. The Hearing

* * * * *

(g) Participation by board members.

(1) Boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are

authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACES, which have not been controverted by any party. The role of the board is to decide whether the application and the record of the proceedings contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the provisional construction permit proposed by the Director of Regulation. The board will not conduct a de novo evaluation of the application, but rather, will test the sufficiency of the information contained in the application and the record of the proceeding and the adequacy of the staff's review to support the proposals of the Director of Regulation. In doing so, the board is expected to be mindful of the fact that it is the applicant, not the regulatory staff, who is the proponent of the provisional construction permit. If the board believes that additional information is required in the technical presentation in such a case, it would be expected

to request the applicant or staff to supplement the presentation, again being mindful of the fact that it is the applicant, not the regulatory staff, who is the proponent of the provisional construction permit. If a recess should prove necessary to obtain such additional evidence, the recess should ordinarily be postponed until available evidence on all issues has been received.

10. Paragraphs (a) and (b) of Section V of Appendix A of Part I are amended to read as follows:

V. General

(a) Two members, being a majority of the board, constitute a quorum, if one of those members is the member qualified in the conduct of administrative proceedings. The vote of a majority controls in any decision by a board, including rulings during the course of a hearing as well as formal orders and the initial decision. A dissenting member is, of course, free to express his dissent and the reasons for it in a separate opinion for the record.

(b) The Commission may designate a technically qualified alternate or an alternate qualified in the conduct of administrative proceedings, or both, for a board. The alternates will receive copies and become familiar with the application and other documents filed by the parties prior to the start of the hearing. It is expected that an alternate will be constituted by the Chairman of the Atomic Safety and Licensing Board Panel as a member of the board in situations where a technically qualified member of the board, or the member qualified in the conduct of administrative proceedings, becomes unavailable for further service prior to the start of the hearing.

11. Paragraph (b) of Section VI of Appendix A of Part 2 is amended to read as follows:

VI. Procedures Applicable to Contested Proceedings

* * * * *

(1) Issues to be decided by board:

The board will, if the proceeding becomes a contested proceeding, make findings on the issues specified in the notice. In a contested proceeding, the board will determine:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

In considering those issues, however, the board will, as to matters not in controversy, be neither required nor expected to duplicate the review already performed by the Commission's regulatory staff and the ACES; the board is authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACES, which are not controverted by any party.

12. Paragraph (d) of Section VI of Appendix A of Part 2 is amended to read as follows:

VI. Procedures Applicable to Contested Proceedings

* * * * *

(d) Participation by board members:

In contested proceedings, the board will determine controverted matters as well as decide whether the findings required by the Act and the Commission's regulations should be made. Thus, in such proceedings, the board will determine

(the matters in controversy and may be called upon to make technical judgments of its own on those matters. As to matters which are not in controversy, boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACES and they are authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACES, which are not controverted by any party. Thus, the board need not evaluate those matters already evaluated by the staff which are not in controversy.

(13. Paragraphs (f) and (g) of Section VI of Appendix A of Part 2 are redesignated paragraphs (g) and (h), respectively; a new paragraph (f) is added and redesignated paragraph (h) is amended to read as follows:

VI. Procedures Applicable to Contested Proceedings

* * * * *

(f) Briefs and oral argument:

If, at the close of the hearing, the board should have uncertainties with respect to the matters

in controversy because of a need for a clearer understanding of the evidence which has already been presented, it is expected that the board would normally invite further argument from the parties - oral or written or both - before issuing its initial decision. If the uncertainties arise from lack of sufficient information in the record, it is expected that the board would normally require further evidence to be submitted in writing with opportunity for the other parties to reply or reopen the hearing for the taking of further evidence, as appropriate; as to either of such courses, it is expected that the applicant would normally be afforded the opportunity to make the final submission.

* * * * *

(h) The intra-agency consultation and communications referred to in Section V(c) are not permitted in contested proceedings. A board may, however, obtain information from the Chairman or Vice Chairman

of the Atomic Safety and Licensing Board Panel for the purpose of identifying relevant decisions or statements of Commission policy.

14. Paragraph (b) of §50.38 of Part 50 is amended to read as follows:

§50.38 Hearings and report of the Advisory Committee on Reactor Safeguards.

* * * * *

(b) The Commission will hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER on each application for a construction permit for a production or utilization facility which is of a type described in §50.21(b) or §50.22 or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit

or operating license without a hearing, upon 30 days' notice and publication once in the FEDERAL REGISTER of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such notice and publication and may issue the amendment.

15. Paragraph (b) of §115.46 of Part 115 is amended to read as follows:

§115.46 Reviews and reports of the Advisory Committee on Reactor Safeguards.

(b) The Commission will hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER on each application for authorization to construct a nuclear reactor subject to this part. When a construction authorization has been issued for such a nuclear reactor following the holding of a public hearing and an application is made for an operating authorization or for an amendment to a construction authorization or operating authorization, the

the Commission may hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating authorization or an amendment to a construction authorization or operating authorization without a hearing, upon 30 days' notice and publication once in the FEDERAL REGISTER of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment of a construction authorization or operating authorization, it may dispense with such notice and publication and may issue the amendment.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

For the Atomic Energy Commission

Secretary

Dated at

this day of , 1968.

APPENDIX "B"

REVISED FORM OF NOTICE OF HEARING*

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

In the Matter of

)
)
)
)
)

Docket No. _____

NOTICE OF HEARING ON APPLICATION
FOR PROVISIONAL CONSTRUCTION PERMIT

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities", and Part 2, "Rules of Practice", notice is hereby given that a hearing will be held at _____, local time, on _____, in _____, to consider the application filed under §104 b. of the Act by _____, for a provisional construction permit for a _____, designed to initially operate at _____, to be located at _____.

The hearing will be conducted by the Atomic Safety and Licensing Board designated by the Atomic Energy Commission, consisting of _____

* To indicate the differences between the present form of notice and the form of notice as revised in conformity with the amendments in Appendix "A", deletions are bracketed and additions are underscored.

_____ has been designated as a technically qualified alternate, and _____ has been designated as an alternate qualified in the conduct of administrative proceedings.

A prehearing conference will be held by the Board at _____ (time and date) _____ at _____ (place) _____ to consider the matters provided for consideration by §2.752 of 10 CFR Part 2 and Section II of Appendix A to 10 CFR Part 2.

The Director of Regulation proposes to make affirmative findings on Item Numbers 1-3 and a negative finding on Item 4 specified below as the basis for the issuance of a provisional construction permit to the applicant, substantially in the form proposed in Appendix "A" hereto.

1. Whether in accordance with the provisions of 10 CFR §50.35(a)

- (a) The applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

- (b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;
- (c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and
- (d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;

2. Whether the applicant is technically qualified to design and construct the proposed facility;
3. Whether the applicant is financially qualified to design and construct the proposed facility; and
4. Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

In the event that this proceeding is not a contested proceeding, as defined by §2.4 of the Commission's "Rules of Practice", 10 CFR Part 2, the Board will, without conducting a de novo evaluation of the application, consider the issues of whether the application and the record of the proceeding contain sufficient information, and the review by the Commission's regulatory staff has been adequate, to support the findings proposed to be made and the provisional construction permit proposed to be issued by the Director of Regulation.

In the event that this proceeding becomes a contested proceeding, the Board will consider and initially decide, as the issues in this proceeding, Item Numbers 1 through 4 above as the basis for determining whether a provisional construction permit should be issued to the applicant.

As they become available, the application, the applicant's summary of the application, the report of the Commission's Advisory Committee on Reactor Safeguards (ACRS) and the Safety Evaluation by the Commission's regulatory staff will be placed in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., where they will be available for inspection by members of the public. Copies of this notice of hearing, the ACRS report, the applicant's summary of the application and the regulatory staff's Safety Evaluation will also be available at (office near proposed site) for inspection by members of the public each workday between the hours of _____ and _____. Copies of the ACRS report and the regulatory staff's Safety Evaluation may be obtained by request to the Director of the Division of Reactor Licensing, United States Atomic Energy Commission, Washington, D.C. 20545.

Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified, but who does not wish to file a petition for leave to intervene, may request permission to make a limited appearance pursuant to the provisions of 12.713 of the Commission's "Rules of Practice". Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary, United States Atomic Energy Commission, Washington, D.C. 20545, by _____.

Any person whose interest may be affected by the proceeding who does not wish to make a limited appearance and who wishes to participate as a party in the proceeding must file a petition for leave to intervene.

Petitions for leave to intervene, pursuant to the provisions of §2.714 of the Commission's "Rules of Practice", must be received in the Office of the Secretary, United States Atomic Energy Commission, [Germantown, Maryland,] Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or the Commission's Public Document Room, 1711 H Street, N.W., Washington, D.C., not later than _____, or in the event of a postponement of the prehearing conference, at such time as the Board may specify. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner in reasonably specific detail. A petition which sets forth contentions relating only to matters outside the Commission's jurisdiction will be denied. A petition for leave to intervene which is not timely filed will be denied unless the petition shows good cause for failure to file it on time.

[Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified, but who does not wish to file a petition for leave to intervene, may request permission to make a limited appearance pursuant to the provisions of §2.715 of the Commission's "Rules of Practice".

Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary, United States Atomic Energy Commission, Washington, D. C. 20545, by _____.

A person permitted to intervene becomes a party to the proceeding, and has all the rights of the applicant and the regulatory staff to participate fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

Answers to this notice, pursuant to the provisions of §2.705 of the Commission's "Rules of Practice", must be filed by the applicant on or before _____.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary, United States Atomic Energy Commission, Washington, D. C. 20545, Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the [Office of the Secretary, United States Atomic Energy Commission, Germantown, Maryland, or] Commission's Public Document Room, 1717 H Street, N.W., Washington, D. C.

Pending further order of the board, parties are required to file, pursuant to the provisions of §2.708 of the Commission's "Rules of Practice", an original and twenty conformed copies of each such paper with the Commission.

FOR THE ATOMIC ENERGY COMMISSION

BY

W. B. McCool
Secretary

APPENDIX "C"

SUMMARY AND ANALYSIS OF COMMENTS ON NOTICE OF
PROPOSED RULE MAKING PUBLISHED NOVEMBER 22, 1967

I. Comments on the proposed amendments to §2.714, Intervention,
and conforming amendments to Appendix A, Statement of General
Policy.

A. Comments

(1) Senator Aiken of Vermont expressed his concern
as to whether the proposed amendments would strengthen
the Commission's hand in limiting intervention by
consumer-owned electric systems in licensing procedures,
by providing that petitions for leave to intervene
stating contentions relating only to matters outside
the jurisdiction of the Commission will be denied.

(2) Senator Hatfield of Oregon referred to the Commis-
sion a letter from a constituent, Katharine Schneider,
enclosing a newspaper clipping which stated that
"According to one proposed rule change such protests
(about thermal pollution) would no longer be heard by
the AEC in evaluating the need for an atomic plant."
Mrs. Schneider requested Senator Hatfield to do whatever
is in his power to block rule changes that would allow
AEC to become careless of our natural resources.

(3) Congressman Dingell of Michigan commented that he felt that the AEC's proposal to prohibit witnesses from discussing subjects outside its jurisdiction is aimed at preventing discussion of thermal pollution in regard to licensing of nuclear plants and determining whether such licensing would be in the public interest, and protested "this new policy" which disregards and forecloses consideration of broad conservation questions. He stated that this is in contravention of the Fish and Wildlife Coordination Act and of the intent and spirit of that Act.

(4) The North Carolina Municipally Owned Electric Systems Association suggested that the Commission await court determination of questions dealing with the rights and procedures of proposed intervenors and with the Commission's authority to deal with the questions raised by them before promulgating the amendments relating to intervention. In addition, the Association had the following comments:

(a) The purpose of the deletion of the requirement that a petition for leave to intervene be filed not later than seven days before the

commencement of the hearing is unclear. If it is meant to restrict further the time to file a petition, and if it is so administered, the result would be bad law and probably reversal by the courts for lack of due process.

(b) The added sentence to the effect that petitions which set forth contentions relating only to matters outside the Commission's jurisdiction will be denied should be abandoned. The issue of the Commission's jurisdiction is one upon which a person otherwise qualified has the absolute right to intervene, and the reviewing courts' trend is to liberalize rights of intervention in administrative proceedings. The Act permits intervention by any person whose interest may be affected, and the Commission and boards have the duty as well as the power to pass on petitions to intervene, and upon any issue raised as to any aspect of the Commission's jurisdiction. Some jurisdictional and scope-of-proceedings issues cannot adequately be considered and decided at early stages of a proceeding and should not be rejected or inadequately treated by denying a petition.

(5) John Pegors, Acting Chairman of the Citizens Committee to Preserve the Homeowners from a Nuclear Catastrophe at Monticello, Minnesota, commented that the proposed changes to §2.714(a) are arbitrary, self-defeating and unnecessary. To require the petitioner to set forth contentions in reasonably specific detail is too vague and leaves too much latitude as to what is reasonable. Further, a petitioner cannot make a detailed presentation until the applicant's case has been presented. The public interest function of the Commission will be negated by adoption of the proposed amendments, and there is no demonstrated need for the proposed changes. Mr. Pegors suggested, for strengthening the hearing process, a system of small grants to responsible intervenors to enable them to prepare a better presentation at the hearing.

(6) LeBoeuf, Lamb, Leiby & MacRae stated that proposed §2.714(a) does not relate the time for filing petitions for leave to intervene to the date of the prehearing conference, as implied in the press release, but does not believe incorporation of the policy in the Commission's rules to be essential. However, the firm

suggested that proposed §2.714(a) be changed to provide that petitions for leave to intervene be filed not later than the time specified in the notice of hearing, eliminating the alternative "or as permitted by the presiding officer." Since §2.714(a) already contemplated that a petition may be filed which is not timely and requires such a petition to show good cause for failure to file on time, the alternative creates an undesirable uncertainty in the intervention procedure.

B. Staff Position

(1) We do not recommend that any change be made in proposed §2.714(a) to accommodate the arguments as to the Commission's jurisdiction made by Senator Aiken, Congressman Dingell, Mrs. Schneider, and, to the extent their comments are based upon their views of the Commission's jurisdiction, the North Carolina Municipally Owned Electric Systems Association and Mr. Rogers. It is the Commission's position (already expressed in letters to Senators Aiken and Hatfield and Congressman Dingell) that the proposed amendments to §2.714(a) providing

that petitions setting forth contentions relating only to matters outside the jurisdiction of the Commission will be denied is designed merely to state more clearly the Commission's long-standing policy of excluding from consideration in our licensing hearings matters which are outside the Commission's regulatory jurisdiction. The current practice of permitting any person whose interest may be affected by the proceeding to intervene to raise questions relating to matters within the Commission's jurisdiction would be continued.

While the Commission's view that its substantive regulatory jurisdiction under present law is limited essentially to matters of radiological health and safety and common defense and security is now, indirectly, being challenged in the Court of Appeals for the District of Columbia Circuit (by would-be intervenors in the Vermont-Yankee case), no useful purpose would be served in delaying promulgation of the amendments to §2.714 until the questions presented in that appeal are decided. The amendments preserve the right of persons to intervene to present questions within the Commission's jurisdiction without defining it. (Other provisions in Appendix A to Part 2 not

now proposed to be amended might require changes if the Court of Appeals takes a different view of the extent of the Commission's regulatory jurisdiction.)

With respect to the North Carolina Municipally Owned Electric Systems Association's arguments, we believe that jurisdictional and scope of proceedings questions can be adequately considered and decided under the proposed rules.

(2) With respect to the deletion of the requirement that a petition for leave to intervene be filed not later than seven days before the commencement of the hearing, it was not intended to afford less time for intervention than is provided under current rules and practice. Under the projected time schedule outlined in the public announcement issued when the notice of proposed rule making was published, while such petitions would have to be filed more than seven days before the date set for hearing, would-be intervenors would have no less time after the notice of hearing was published (24-28 days) to file a petition than is now the case.

(3) With respect to the objection of John Pegors to the proposed requirement that the petitioner set forth his contentions in reasonably specific detail, we do not consider the term "reasonably specific" to be too vague.

(4) We see no merit to the suggestion of John Pegors that the Commission pay grants to responsible intervenors.

(5) We do not consider adoption of the suggestion by LeBoeuf, Lamb, Leiby & MacRae necessary or desirable. The provision of §2.714(a) that petitioner for leave to intervene be filed within a specified time or "as permitted by the presiding officer" serves to clarify that the presiding officer may permit filing of petitions for leave to intervene at a time other than that specified in the notice of hearing when the circumstances warrant.

II. Comments on the proposed amendment to §2.721, atomic safety and licensing boards.

A. Comments

(1) North Carolina Municipally Owned Electric Systems Association supported the proposed amendment.

which would permit appointment of an alternate qualified in the conduct of administrative proceedings to an atomic safety and licensing board.*

(2) John Pegors objected on the ground that maximum effectiveness of atomic safety and licensing boards will be attained if technically qualified alternates are named, rather than an administratively qualified alternate, and that a possible exchange of a technically qualified person for an administratively qualified one would weaken the board's ability to judge adequately the multitudinous questions involved.

2. Staff Position

John Pegors' comment reflects a misunderstanding of the proposed amendment. It is not intended, and the proposed §2.721(b) does not state, that an alternate qualified in the conduct of administrative proceedings will be substituted for a technically qualified member or alternate.

* Other comments of the Association merely stating support of the proposed amendments are not included in this Appendix unless other comments have been made on the particular subject.

III. Comments on proposed amendments to Section II(c) of Appendix A of Part 2 - discussion of evolution of proposed reactor in applicant's summary.

A. Comments

(1) North Carolina Municipally Owned Electric Systems Association supported the amendment.

(2) John Pegors expressed concern that the amendment might put too great emphasis on the reactor's evolutionary pattern and cause the parties to overlook a potential fatal flaw in the design or system. He recommended that each reactor should be treated as a new and individual one.

(3) LeBoeuf, Lamb, Leiby & MacRae suggested that the wording of the statement be changed to refer to evolution of the design of the reactor (rather than evolution of the reactor) from the design of reactors which have recently (rather than previously) been approved or completed.

B. Staff Position

(1) With respect to John Pegors' comment, we believe that it will be helpful to atomic safety and licensing

boards, in their review of the application, to have the applicant discuss the evolution of the proposed reactor from previously built or approved designs.

(2) We consider the suggestion by LeBouef, Lamb, Leiby & MacRae, to refer to evolution of the "design" of the proposed reactor rather than the "reactor", would clarify the meaning of the sentence describing what should be included in the applicant's summary. However, we consider that the substitution of "recently" for "previously" approved or completed reactors would needlessly introduce a term subject to varied interpretation into the section.

IV. Comments on proposed amendments to Section II(f) of Appendix A of Part 2 - indication that the atomic safety and licensing board should receive applicant's summary and staff safety analysis at least two weeks prior to receipt of petitions for leave to intervene.

A. Comments

(1) North Carolina Municipally Owned Electric Systems Association supported the amendment.

(2) John Fegors regarded the proposed amendment as an improvement over present practice, but stated that it would be a further improvement if the required documents were made available 30 days prior to the prehearing conference.

B. Staff Position

We believe that the two-week period affords sufficient time to permit consideration and preparation of petitions for leave to intervene, and has the advantage of shortening the period of time between publication of the notice of hearing and the hearing itself.

V. Comments on proposed amendments to Section I, Appendix A of Part 2 - provision that the prehearing conference will usually be held in the Washington, D.C., area.

A. Comments

(1) North Carolina Municipally Owned Electric Systems Association supported the amendment.

(2) The newspaper clipping, enclosed in the letter of Katharine Schneider to Senator Hatfield, on which her

comment to the Senator was based. stated that the change would require that all prehearing conferences be held in Washington, which would make it more difficult for poorly-financed local groups who oppose atomic plants to attend the hearings.

B. Staff Position

As stated in the reply to Senator Hatfield, the proposed amendments also state that it is the Commission's policy and practice to hold the evidentiary hearing in the vicinity of the reactor site and that, in fixing the time and place of the prehearing conference, due regard shall be had for the convenience and necessity of the parties or their representatives, as well as of the board members, who are the presiding officers in such proceedings. It is not the intent of the proposed amendments to foreclose local groups from attending the hearings, which would be held in the locality, or from attending the prehearing conferences. Accordingly, we see no need for modifying the proposed amendments.

VI. Miscellaneous comments and suggestions.

A. Comments

(1) John Fegors suggested that the Commission consider (a) requiring applicants to obtain qualified "neutral" consultants in the engineering and design of the proposed facility, rather than depending upon representatives of the equipment supplier, and (b) having atomic safety and licensing boards retain a qualified biologist, capable of independent evaluation of the biological impact of a reactor on a given region.

(2) LeBoeuf, Lamb, Leiby & MacRae commented that they thought no useful purpose would be served by including a new paragraph (Section I(e)) in Appendix A of Part 2 pertaining to requests by a party to consider the matter of the suitability of a proposed site separately from, and prior to, other questions relating to the effect of the construction and operation of a facility upon the public health and safety and the common defense and security.

B. Staff Position

(1) With respect to John Pegors' first and second suggestions, we see no merit in requiring applicants to retain "neutral" consultants, or to having boards retain a qualified biologist.

(2) With respect to LaBoeuf, Lamb, Leiby & MacRae's comment on the addition of a paragraph dealing with separate consideration of the site question, while inclusion of the paragraph is not essential, we believe it to be helpful to include a reference to the possibility of separate consideration of the site questions in Appendix A to Part 2.

Congress of the United States
JOINT COMMITTEE ON ATOMIC ENERGY

December 22, 1967

Dr. Glenn T. Seaborg
Chairman
Atomic Energy Commission
1717 H Street, N.W.
Washington, D.C.

Dear Glenn:

I have noted your press release of November 21 and the Notice of Proposed Rule Making as published in the Federal Register of November 22 relating to amendments to existing AEC regulations.

I am specifically concerned to know if these revisions would in effect strengthen the Commission's hand in limiting intervention by consumer-owned electric systems in licensing procedures (Sections 2.714 and 2.721). This is summarized in the press release where it is noted "petitions stating contentions relating only to matters outside the jurisdiction of the Commission will be denied." For example, in the Duke case the Licensing Board received a petition to intervene from 11 cities on the ground that their economic interest was affected. The Board ruled that the cities could intervene and the Regulatory Staff also passed this along to the full Commission. These cities did intervene and cross-examine witnesses.

Under the proposed changes, would it not be more difficult to intervene, for Duke would only have to ask for denial of the application to intervene on the ground that it is beyond the jurisdiction of the Commission? I would appreciate having your explanation of this as well as any other possible effects the proposed changes would have on nuclear power problems in the light of my bill, S. 2564.

Sincerely yours,

GEORGE D. AIKEN

Annex to
Appendix "C"

WASHINGTON OFFICE
SPECIAL INQUIRY SERVICE OFFICE
WASHINGTON, D.C. 20540
BOSTON OFFICE
8717 Beacon Street
BOSTON, MASSACHUSETTS 02116

Congress of the United States
House of Representatives
Washington, D.C.

December 21, 1967

INTERNATIONAL AND FOREIGN COMMERCE
MERCHANT MARINE AND FISHERIES
COMMITTEE
SUBCOMMITTEE ON
FISHERIES AND WILDLIFE CONSERVATION
SOLAR COMMISSION ON SMALL BUSINESS
COMMISSION ON ENVIRONMENT AND
REGULATION AND EMPLOYMENT ACT

Dr. Glenn T. Seaborg, Chairman
Atomic Energy Commission
Washington, D. C. 20545

Dear Dr. Seaborg:

It has been brought to my attention that the Atomic Energy Commission proposes to specifically prohibit witnesses from discussing subjects which are outside that agency's jurisdiction. I feel this prohibition is directly aimed at preventing discussion of thermal pollution in regard to licensing of nuclear plants and determining whether such licensing would be in the public interest.

I wish to protest in the strongest way possible this new policy which completely disregards and forecloses consideration of broad conservation questions, among which thermal pollution is most important. This clearly is not only in contravention of the Fish and Wildlife Coordination Act but also in clear violation of the intent and spirit of that important conservation legislation.

The previous actions of the AEC afford small comfort to the conservationists and make it very plain that the AEC intends to continue pushing atomic energy without the slightest regard for conservation values. Other agencies of the Federal Government such as the Corps of Engineers, Bureau of Land Management, Forest Service, Federal Power Commission, Bureau of Public Roads, Department of Commerce and Tennessee Valley Authority have all evolved important internal policies directed at preservation of fish and wildlife values, and at requiring their licensees, land users, grazers, diggers and dredgers to exercise care not only to preserve but actually to enhance conservation values and fish and wildlife.

In this particular the AEC stands almost alone and isolated, operating directly against the broad policies of the rest of the government.

I wish to hear from you at your early convenience regarding your full intentions on this matter. I serve notice on you at this time that if you fail to adhere to an adequate practice of protecting fish and wildlife values and if you fail to take appropriate steps to protect the public interest against this grave new hazard of thermal pollution, I will bring appropriate legislation before the Subcommittee of which I am Chairman for a hearing which will be directed at early enactment of legislation to redress this clear evidence of abuse by the AEC.

Very sincerely yours,

John D. Dingell

John D. Dingell
Member of Congress

United States Senate

Respectfully referred to
Congressional Liaison
Atomic Energy Commission

for such consideration as the communication
herewith submitted may warrant, and for a report
thereon, in duplicate to accompany return of
inclosure.

By direction of

Mark O. Hatfield

U. S. S.

U. S. S.

The Honorable Mark Hatfield
Page Two.

do whatever is in your
power to block these
rule changes that would
allow the AEC to become
custodians of our natural
resources. We have got
to do all we can to
preserve what is left!!

Yours truly,

Mathew Schneider
(Mrs. Frank Schneider)

The Atomic Energy Commission is pre-
paring rule changes that may be tough on
people who can't wait atomic power plants
in their vicinity.

Conservation-minded opponents of civil-
ian atomic plants, often argue that the
plants "pollute" the water with waste heat.

According to the proposed rule change
such protests would no longer be heard by
the AEC in evaluating the need for an
atomic plant. Opponents would have to
take their cases elsewhere. Most likely the
cases will fall to pollution control authori-
ties.

Another change the AEC proposes would
require that all prehearing conferences be
held in Washington.

This is expected to make it more difficult
for poorly financed local groups who oppose
atomic plants to attend the hearings. Costs
of travel to and from the capital and hotel
expenses while there might be prohibitive.

50

*Secretariat Note: Page 1 of Mrs. Schneider's letter is not germane
to this item and has been deleted.

TALLY, TALLY & LEWIS
ATTORNEYS AND COUNSELLORS AT LAW
HOME FEDERAL BUILDING
P. O. DRAWER 1646
TELEPHONE 463-4076, AREA CODE 919
FAYETTEVILLE, NORTH CAROLINA
28302

DISTRICT OF COLUMBIA OFFICE:
J. O. TALLY, JR.
834
429 M. STREET, S.W.
TELEPHONE 561-3635, AREA CODE 202
WASHINGTON, D. C.
20004

J. OSCAR TALLY
JOSEPH O. TALLY, JR.
RICHARD M. LEWIS, II.

18 January 1968

Secretary
U. S. Atomic Energy Commission
Washington, D. C. 20545

Attention: Chief of Public Proceedings
Public Proceedings Branch

Dear Sir:

The North Carolina Municipally Owned Electric Systems Association is an organization of 73 cities and towns in North Carolina which own and operate electric distribution systems for the persons resident in their cities and suburbs. I am the General Counsel of the Association.

Pursuant to the notice and invitation extended in the Federal Register of 23 November 1967, I have the honor to submit herewith, on behalf of the Association, comments concerning the promulgated proposed amendments to the regulations and policies of the United States Atomic Energy Commission.

Sincerely,

Jo. Tally

Enclosure

COMMENTS OF J. O. TALLY, JR., GENERAL COUNSEL,
NORTH CAROLINA MUNICIPALLY OWNED ELECTRIC
SYSTEMS ASSOCIATION,
ON
AMENDMENTS TO ITS REGULATIONS AND REVISIONS
OF
ITS POLICY STATEMENT PROPOSED
BY
THE UNITED STATES ATOMIC ENERGY COMMISSION,
AS PUBLISHED IN THE FEDERAL REGISTER
ON
22 NOVEMBER 1967.

INTRODUCTORY STATEMENT CONCERNING
THE SUBSTANCE AND TIMING OF THESE PROPOSED AMENDMENTS

Substantively the most significant portions of these proposed amendments and revisions deal with rights and procedures of proposed intervenors and with the Commission's authority and duty to deal with such questions and issues.

Some of these vital questions are now up for judicial review, which could obviate the need for, or vitiate, these amendments and revisions. One case [In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), Docket No. 50-271] raising fundamental issues as to these vital questions is already filed in the United States Court of Appeals for the District of Columbia. Another [In the Matter of Duke Power Company (Oconee Nuclear Station Units 1, 2 and 3), Docket Nos. 50-269, 50-270 and 50-287] will, within weeks, be filed there. Others (for example, In the Matter of Philadelphia Electric Company, Docket Nos. 50-277 and 50-278) may soon be filed.

In view of this situation, it would appear wise for the Commission to withdraw promulgation and notice of these proposed amendments and

revisions at this time, and await court determination of the context and permissible content of such regulations and policy.

If this is not done, it is still considered useful and even necessary to submit the following detailed comments.

DETAILED COMMENTS

1. Amending the first sentence of S 2.104(a).

Comment:

The proposed amendment clarifies and improves this provision to serve due process.

2. Amending Paragraph (a) of S 2.714.

Com-

... Is difficult to determine what the Commission has in mind in deleting the requirement to file "not later than seven (7) days before the commencement of the hearing." If it is meant to restrict even further the present scant time to petition to intervene, and if the amended rule were administered so constrictively, the results would be 1) bad administrative law, and, probably, 2) an abrogation of the rule by a reviewing court for lack of due process.

3. The new, inserted sentence purporting to empower the Commission to deny a petition "which sets forth contentions relating only to matters outside the jurisdiction of the Commission" is wholly bad and should be abandoned.

The statements (as to the timing of the promulgation of these amendments) which introduced these comments are here applicable. In the Commission cases there cited the Commission has ruled, or attempted to rule, as to grounds of intervention, as it here, apparently, would seek to formalize by rule.

This could be construed as an attempt by the Commission to lift itself by its own bootstraps above any vulgar considerations of the meaning and requirements of the Statute which created the Commission.

This is an endeavor which, even if possible by physical law, is not permitted by constitutional law.

Now only is the issue of the Commission's jurisdiction one upon which a person (otherwise qualified) has the absolute right to intervene but, also, the unmistakable trend of the reviewing courts is to widen and liberalize the rights of intervention in administrative proceedings.

See: 45 North Carolina Law Review 998 (June 1967); 81 Harvard Law Review 221 (November 1967); and 81 Harvard Law Review 308 (December 1967).

The statute sets a broad and liberal standard for intervention - "any person whose interest may be affected." The Commission and its Boards have the jurisdictional duty as well as the jurisdictional

power to pass on such intervention petitions.

And the Commission and its Boards have the jurisdictional duty as well as the jurisdictional power to pass upon any issue raised in relation to any aspect of the Commission's jurisdiction itself.

Some jurisdictional and scope-of-proceedings' issues and questions cannot adequately be considered and decided at early stages of a proceeding. They should not be rejected out of hand or inadequately treated by the device of denying a petition, or any other device.

The Commission's authority is adequate to deal with these matters. And its duty to do so is plain.

3. Amending Paragraph (b) of § 2.721.

Comment:

A constructive and needed amendment.

4. Amending Paragraphs (a) and (b) of Section I of Appendix A of Part 2.

Comment:

A distinct improvement.

5. Redesignating paragraphs (e) and (f) of Section I of Appendix A of Part 2 and adding a new paragraph (e).

Comment:

Useful amendment.

6. Amending Paragraph (b) and (e) of Section II of Appendix A of Part 2 and adding a new Paragraph (f).

Comment:

Useful amendments.

7. Amending Subparagraphs (b) (2), (3), and (4) of Section III of Appendix A of Part 2.

Comment:

The changed language (and the absence of any change in the language of Subparagraph (b) (1) still suffers from the fatal defect of the Commission's bootstrap concept of its jurisdiction. See Comment 2. B. above.

8. Amending Subparagraph (c) (7) of Section III of Appendix A of Part 2.

Comment:

Proper and clarifying.

9. Amending Paragraph (g) of Section III of Appendix A of Part 2.

Comment:

The most significant change here is the inclusion of language reminding that it is the applicant, not the regulatory staff, who is the proponent of the permit.

This explicit admonition is not only the meaning of the law; it is essential to due process; and it is the heart of fair presentation and consideration.

10. Amending Paragraphs (a) and (b) of Section V of Appendix A of Part 2.

Comment:

It is clearly needed to provide for an alternate member

qualified in the conduct of administrative proceedings
as well as for an alternate technical member.

11. Amending Paragraph (b) of Section VI of Appendix A of Part 2.

Comment:

A useful, more accurate statement.

12. Amending Paragraph (d) of Section VI of Appendix A of Part 2.

Comment:

A useful, more accurate statement.

13. Redesignating Paragraphs (f) and (g) of Section VI of Appendix
A of Part 2, adding a new paragraph (f) and amending redesignated Paragraph

Comment:

Useful.

14. Amending Paragraph (b) of S 50.58 of Part 50.

Comment:

No comment.

15. Amending Paragraph (b) of S 115.46 of Part 115.

Comment:

No comment.

January 17, 1968

Mr. W.B. McGool, Secretary
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dear Mr. McGool:

Accompanying this letter are three copies of a commentary on the proposed changes to 10 CFR Parts 2, 50, 115; entitled Licensing of Production and Utilization Facilities. The proposed rule making changes were published in the Federal Register, Volume 32, Number 226 - Wednesday, November 22, 1967, on pages 16050 - 16053.

These comments are made on behalf of a citizens group of which I am a member. Should you require additional information in this matter, please feel free to contact me at the address listed below.

Sincerely yours,

John Pegors
John Pegors

Acting chairman,
Citizens Committee to Preserve the Homeowners from a
Nuclear Catastrophe at Monticello, Minnesota

315 Tenth Avenue North
Hopkins, Minnesota 55343

(612) 935-6645

COMMENTS ON ATOMIC ENERGY COMMISSION PROPOSED RULE MAKING
CHANGES, 10 CFR PARTS 2, 50, 110; LICENSING OF PRODUCTION
AND UTILIZATION FACILITIES. FEDERAL REGISTER, VOL. 32,
NO. 226 - WEDNESDAY, NOVEMBER 22, 1967; PAGES 10050 - 10053
INCLUSIVE.

MR. W. B. MCCOOL, SECRETARY
U.S. ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

January 1, 1968

Dear Mr. McCool:

My name is John Pegora, natural-born citizen of the United States of America, residing at my current address for more than twenty-one years, acting chairman of the Citizens Committee to Preserve the Homeowners from a Nuclear Catastrophe at Monticello, Minnesota.

My comments on the Commission's proposed rule making changes will be restricted to sections 2.714(a); 2.721(b) and the proposed amendments of paragraphs (b) and (c) of section II of Appendix A of Part 2.

It has been my privilege to participate in one provisional construction permit application hearing, held on May 25, 1967, in Buffalo, Minnesota, in the matter of the Northern States Power Company for its Monticello Nuclear Generating Plant. My participation was as a limited appearer in this matter, after my application for leave to intervene had been denied by the Hearing Board. I was favorably impressed by the conduct of the hearing by Chairman Arthur W. Murphy and appreciated his willingness to permit me to attempt to obtain more information concerning the impact of the proposed facility on the residents of the area. Nevertheless, my participation was beyond the scope permitted under your regulations and could have been halted by any other Hearing chairman.

Concerning Section 2.714(a) of Part 2, it is apparent that the Commission's proposed changes are arbitrary, self-defeating and unnecessary. To require the petitioner for leave to intervene to set forth "in reasonably specific detail" his contentions is too vague and leaves too great latitude for definition of what is or is not reasonable. It is apparent that a petitioner can not make a detailed presentation until the case has actually been presented by the applicant. This vitiates fatally the Commission's proposed change.

The public interest function of the Commission will be negated by adoption of the proposed Section 2.714(a). The prohibition of intervention by an informed, concerned and responsible group of citizens can only redound to the disadvantage of the Commission in its functions. The impending high rate of use of nuclear fuels for electricity generation requires the approval of the population. An unfavorable reaction to Commission policy regarding intervention will in all probability harm these programs.

There is no demonstrated need for the proposed changes in Section 2.714(a), in fact no need for such proposals can be intelligently predicted at this time. No one single consumer has been denied unrestricted use of electricity because of the current Section.

I should like to propose for consideration by the Commission the following ideas for strengthening of the present Hearing process in the matter of provisional construction permits.

- A. A system of small grants to responsible intervenors in order that they can prepare a better presentation at the hearing, thus utilizing to the maximum the time and energies of the Board and its members.
- B. A requirement that the applicant obtain qualified, neutral consultants in the engineering and design of the proposed facility. Current practice of depending entirely upon representatives of the firm selling the facility dulls the thinking of these company representatives as to the matter of present or potential hazards to the citizens, the environment and the economic well-being of the operator of the facility.
- C. Retention by the Hearing Board of at least one qualified biologist, capable of independent evaluation of the biological impact of a reactor on a given region. Current practice of the Commission is demonstrably lax in this important field.

By way of exegesis of the preceding proposals, I would like to include the following: Proposal A should have a ceiling of no more than \$5,000 placed upon any one grant in a given hearing. The persons receiving the grant should be residents and homeowners in a specified radius from the proposed facility, let us say that a maximum of fifty miles be placed upon the limits of these grantees. Grants could be paid on a matching basis, with fifty cents of each dollar coming from the Commission, the balance from the applicant. Expenditures under this procedure would be subject to usual auditors controls and unexpended monies returned to the grantors.

Proposal B is designed to sharpen the thinking of the applicant and contractors in order to overcome the lazy thinking they now use. Particularly onerous is the use of "experts" in the employ of the prime contractor to act as an "independent, unbiased" source of information in response to important questions.

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The use of foreign scientific persons would introduce a higher degree of creative thinking among our own people operating in this field. In hearings of this kind, we are not discussing a new model of washing machine, or a modification of an existing refrigerator, as would seem to be the case as evidenced by the posture of some participants.

Proposal C has as its objective the increased emphasis on the biological impact of a nuclear generating facility on the environment. Current practice of calling upon the Fish and Wildlife Service for its comments is decidedly weak and holds the Hearing up to ridicule. A highly qualified biologist, with wide experience in the ecological problems involved would lead to a strengthened Hearing. This person should perhaps be engaged on a consultant basis, if this can give him greater latitude in protecting the biosphere. In the light of current efforts by the nuclear industry to have the functions of the Advisory Committee on Reactor Safety downgraded, addition of such a review would serve to protect the public interest.

In the matter of Section 2.721(b), maximum effectiveness of the atomic safety and licensing boards will be attained if technically qualified alternates are named, rather than an administratively qualified alternate. A possible exchange of a technically qualified person for an administratively qualified one would weaken the board's ability to judge adequately the multitudinous questions involved in the activity of the safety and licensing boards. Simple administrative ability should not be substituted for technical competence. It would be a more meaningful proposal to strengthen the technical side of the boards.

In the proposed new paragraph (e) of section II of Appendix A of Part 2, the proposal to have an applicant include the evolution of his proposed reactor may contain the seeds of future serious problems for the Commission and the applicant. Too great emphasis on a Reactor evolutionary pattern may cause the hearing parties to overlook a potential fatal flaw in a reactor design or system(s). Each reactor would receive closer scrutiny and greater attention to all its parts if it is treated as a new and individual reactor. This is indeed a minuscule inconvenience in comparison with the benefits to be derived by deemphasizing the evolution of the reactor in review. The success of the Commission program requires that the vigilance of the safety and licensing boards be increased rather than slackened.

In proposed new paragraph (f), this is an improvement over the present practice with regard to the applicant's summary and the staff safety analysis. It would be a further improvement if the required documents were made available 30 days prior to the prehearing conference. No hardship would be imposed on any of the parties by a 30 day lead time for evaluation of the documents by interested parties. But in no case should this time be allowed to be less than the proposed 2 weeks.

Protection of the public welfare is the crucial time at stake in the atomic energy program and every step the AEC takes to protect that public welfare is a contribution of importance. Hazards connected with the nuclear generating program cannot be underestimated by those charged with operation of the program. With the increased burden of radiation being placed upon our citizens,, including television sets, medical use and dental procedure, the AEC must redouble its efforts to overcome these other environmental sources. The public welfare demands a forceful adversary to see that its interests are given precedence over economic interests.

The Committee expresses its thanks for the opportunity to present its views on this important problem. We respectfully urge the Commission to adopt the proposals contained in this communication.

John Pagors
Acting Chairman

Citizens Committee to Preserve the Homeowners
from a Nuclear Catastrophe at Monticello,
Minnesota.

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January 19, 1968

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Secretary
U. S. Atomic Energy Commission
Washington, D. C. 20545

Attn: Chief, Public Proceedings Branch

Dear Sir:

This letter is in reference to the proposed amendments to 10 CFR Parts 2, 50 and 115 published in the Federal Register on November 22, 1967 (32 F.R. 16050, as amended by 33 F.R. 638). We have the following comments to offer concerning these amendments.

1. Section 2.714(a) of Part 2 would be amended to provide, among other things, that a petition for leave to intervene shall be filed "not later than the time specified in the notice of hearing, or as permitted by the presiding officer." The press release issued by the AEC in connection with these proposed amendments (No. K-272, November 21, 1967) contains a timetable of events which the AEC expects would normally be followed before a public hearing is held in a reactor licensing proceeding. This schedule implies that the notice of hearing would normally specify that petitions for leave to intervene must be filed two work days before the pre-hearing conference. However, the proposed amendment to 10 CFR §2.714(a) does not relate the time for filing petitions for leave to intervene to the date of the pre-hearing conference.

We agree with the policy implied in the Commission's press release concerning the deadline for filing petitions for leave to intervene and do not believe it is essential to incorporate this policy within

the Commission's rules. However, we see no reason why the first sentence of section 2.714(a) should provide that such petitions must be filed "not later than the time specified in the notice of hearing, or as permitted by the presiding officer" (emphasis supplied).

The last sentence of section 2.714(a), as presently worded and as the section would be changed by the proposed amendment, provides: "A petition for leave to intervene which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file on time." The rule therefore contemplates the possibility that a petition may be filed which is not timely, and provides a test which the petitioner must satisfy in such a case. However, the underscored language in the first sentence, quoted above, creates an undesirable uncertainty in the intervention procedure.

For these reasons, we recommend that 10 CFR §2.714(a) be amended to read as follows:

"Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition under oath or affirmation for leave to intervene not later than the time specified in the notice of hearing. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner in reasonably specific detail. A petition which sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. A petition for leave to intervene which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time."

In this connection, the proposed amendment to section III, subparagraph (b)(3) of Appendix A, 10 CFR Part 2, is fully consistent with our suggested change.

2. Appendix A of Part 2 would be amended by adding a new paragraph (e) to Section I, pertaining to requests by a party to the Commission to consider the matter of the suitability of a proposed site separately from, and prior to, other questions relating to the effect of the construction and operation of a facility upon the public health and safety and the common defense and security.

We recognize that the second Regulatory Review Panel discussed this general subject briefly, and suggested that perhaps an applicant should be permitted to request a preliminary formal hearing on the sole question of site selection. However, in our opinion no useful purpose would be served by including this new paragraph in Appendix A. We are aware of nothing in the existing regulations to prevent an applicant from making the type of request referred to in this paragraph, although we believe a number of difficult problems would have to be resolved if such a request were granted.

3. Appendix A, section II, paragraph (e), of Part 2 would be amended to provide, among other things, that "it is desirable for the applicant's summary statement to include, as appropriate, a discussion of the evolution of the proposed reactor, including associated safeguards, from reactors which have previously been approved or built."

We suggest that the intent of this sentence would be more meaningfully expressed if it were amended to read as follows:

"It is desirable for the applicant's summary statement to include, as appropriate, a discussion of the evolution of the design of the proposed reactor, including associated safeguards, from the design of reactors which have recently been approved or completed."

Sincerely yours,

L. Boeuf, Lamb, Leiby & MacRae
LeBoeuf, Lamb, Leiby & MacRae

Annex to Appendix "C"

APPENDIX "D"

DRAFT LETTER TO THE JOINT COMMITTEE ON ATOMIC ENERGY

1. Enclosed for the information of the Joint Committee on Atomic Energy is a notice of rule making amending the Commission's Rules of Practice, 10 CFR Part 2, including Appendix A of that part, "Statement of General Policy: Conduct of Proceedings for the Issuance of Construction Permits for Production and Utilization Facilities for Which a Hearing is Required Under Section 189 a. of the Atomic Energy Act of 1954, As Amended", and Parts 30 and 115.

2. The amendments reflect in part recommendations made by the Second Regulatory Review Panel appointed by the Commission to study contested cases involving applications to construct and operate nuclear facilities. The panel's report was submitted on June 15, 1967. Many of its recommendations approved procedures and practices already used by the Commission.

3. The Commission's rules pertaining to intervention (10 CFR §2.714(a)) have been amended (a) to require a petitioner for leave to intervene to set forth his contentions in reasonably specific detail; (b) to specify that petitions setting forth contentions relating only to matters outside the jurisdiction of the Commission

will be denied; and (c) to require the petition to be filed within the time specified in the notice of hearing. Section 2.721(b) of Part 2, which presently provides for the appointment of technically qualified alternates for the boards, has been amended to provide for the appointment of alternates for atomic safety and licensing boards who are qualified in the conduct of administrative proceedings.

4. Amendments to the Statement of General Policy which may be of particular interest are: (a) a provision that prehearing conferences will usually be held in the Washington, D.C., area, but that due regard shall be had for the convenience and necessity of the parties or their representatives; (b) a provision recognizing that requests may be made for a separate hearing on the matter of site selection; (c) a provision indicating that it is desirable for the applicant's summary of the application to discuss the evolution of the proposed reactor design from designs of reactors which have previously been approved or built; (d) a provision encouraging the submission to the board of the applicant's summary of the application, as well as the regulatory staff's safety analysis, at least two weeks prior to the date specified in the notice of hearing for the receipt of petitions for leave to intervene; (e) a provision that the boards, in testing the sufficiency of the information contained in the application and in the record, and the adequacy

of the regulatory staff's review, to support the proposals of the Director of Regulation in an uncontested proceeding, should be mindful that the applicant, not the regulatory staff, is the proponent of the license; (f) a provision clarifying the point that in contested proceedings, a board may obtain information from the Chairman or Vice Chairman of the Atomic Safety and Licensing Board Panel for the purpose of identifying relevant decisions or statements of Commission policy; and (g) a provision that two members of a board constitute a quorum if one of those members is the member qualified in the conduct of administrative proceedings.

5. The amendments were published for comment in a notice of proposed rule making in the Federal Register on November 22, 1967. Sixty days were allowed for public comment. A few minor changes have been made in the amendments as adopted.

6. The notice of rule making will be transmitted to the Office of the Federal Register; the amendments will become effective thirty days after publication in the Federal Register.

7. Enclosed also is a copy of an announcement we plan to issue in the next few days on this matter.

APPENDIX "E"

DRAFT PUBLIC ANNOUNCEMENT

AEC APPROVES AMENDMENTS TO REGULATIONS AND
POLICY STATEMENT ON REACTOR LICENSING PROCEDURES

The Atomic Energy Commission has approved amendments to its regulations relating to reactor licensing procedures, and revisions to the Commission's Statement of General Policy concerning the conduct of public hearings by atomic safety and licensing boards.

The changes reflect in part recommendations made by a special Regulatory Review Panel appointed by the Commission to study AEC procedures for handling contested cases. A contested proceeding is one in which there is a controversy between the AEC regulatory staff and the applicant concerning the issuance of the license or any of its terms or conditions, or in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission.

The amendments are intended to expedite the Commission's facility licensing procedures in contested cases and to clarify certain provisions in existing regulations.

One amendment to Part 2, "Rules of Practice", deals with petitions to intervene in reactor licensing proceedings. The regulation presently requires that a petition state the contentions of the

petitioner. The amendment requires those contentions to be reasonably specific. It also provides that petitions stating contentions relating only to matters outside the jurisdiction of the Commission will be denied. The petition must be filed within the time specified in the notice of hearing or as permitted by the presiding officer. The regulation will continue to provide that a petition which is not filed within the allowable time period will be dismissed unless the petitioner shows good cause for failure to file it on time.

Atomic safety and licensing boards are composed of two technically qualified members and one member who is qualified to conduct administrative proceedings. In appointing a board, the Commission names an alternate to serve in the event a technical member is unable to participate. The Commission has now provided for the appointment of an alternate lawyer member.

The Commission's Statement of General Policy, which is an appendix to Part 2, explains the procedures to be followed by atomic safety and licensing boards in conducting public hearings. Of the amendments to the statement, those which may be of particular interest are:

- (1) Prehearing conferences usually will be held in the Washington, D.C., area unless the convenience or necessity of the parties directs otherwise.
- (2) Requests may be made for a separate hearing on the matter of site selection.
- (3) It is desirable for the applicant's summary of the application to discuss the evolution of the proposed reactor design from the design of reactors which have been previously approved or built.
- (4) The applicant is encouraged to submit to the board a summary of the application, and the AEC regulatory staff is encouraged to submit its safety evaluation at least two weeks before the date specified in the notice of hearing for receipt of petitions for leave to intervene.
- (5) The boards, in testing the sufficiency of the information contained in the application and in the record, and the adequacy of the regulatory staff's review to support the proposals of the Director of Regulation, should be mindful that the applicant, not the regulatory staff, is the proponent of the license.

- (6) In contested proceedings, a board may obtain information from the Chairman or Vice Chairman of the Atomic Safety and Licensing Board Panel for the purpose of identifying relevant decisions or statements of Commission policy.
- (7) It is provided that two members of a board constitute a quorum if one of the members is the member qualified to conduct administrative proceedings.

The Commission's goal is to have its reactor licensing proceedings conducted in as orderly and expeditious a manner as possible, taking into account the necessity of having all pertinent material available on a timely basis. To this end, a general time table of events before the public hearing is held will be followed, whenever practicable, under the revised procedures. Generally, within a week or two after receipt of the report of the Advisory Committee on Reactor Safeguards concerning a proposed reactor, the ACRS report will be made public and a notice of hearing will be issued. The revised Statement of General Policy states that the conduct of the prehearing conference will be facilitated if the board is provided with the applicant's summary of the application and the staff's safety analysis well in advance of the prehearing conference. It also states that failure of the board to receive those documents at least two weeks prior to the date specified in the notice of hearing for the receipt of petitions for leave to intervene may result in a rescheduling of the prehearing conference and the hearing. Two work days after the time for receipt of petitions to

intervene, the prehearing conference will be held. Two weeks after the prehearing conference, the public hearing will ordinarily be held. Thus a notice of hearing will be issued approximately six weeks in advance.

All of the amendments outlined above were published for public comment on November 22, 1967. Comments received were taken into consideration by the Commission in its approval of the final form of the amendments. Except for some minor changes, mainly of an editorial nature, the text is the same as that published for public comment.

These amendments to Commission regulations, Parts 2, 50 and 115, will be effective thirty days after publication in the Federal Register on _____.