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

SEP 21 1981

MEMORANDUM FOR: E. Kevin Cornell
Deputy Director for Operations

FROM: Howard K. Shapar
Executive Legal Director

SUBJECT: THE "SHOLLY AMENDMENT" AND NO SIGNIFICANT HAZARDS CONSIDERATION

The Problem: The Court Decision

Section 189a. of the Atomic Energy Act presently allows NRC to dispense with prior notice and publication in the Federal Register of a license amendment, with respect to granting an opportunity for a hearing, whenever it determines that the amendment involves no significant hazards consideration. On November 19, 1980, the U.S. Court of Appeals for the D.C. Circuit, in Sholly v. NRC, held, however, that section 189a. requires NRC, upon the request of any person whose interest may be affected, to conduct a hearing on any license amendment before issuing and making immediately effective that amendment, even if it determines that the amendment involves no significant hazards consideration.

The Basic Solution of S. 1207 and H.R. 4255

Both S. 1207 and H.R. 4255, in effect, overrule the Sholly decision by authorizing NRC to issue and make immediately effective a license amendment upon a determination that the amendment involves no significant hazards consideration, notwithstanding the pendency before it of a request for a hearing.

Comparison of S. 1207 and H.R. 4255: OELD's Views

S. 1207 is preferable, on the whole, to H.R. 4255, as explained below; however, the third point, concerning public notice and comment, is a close call and H.R. 4255 may be preferable as to this point.

First, in authorizing NRC to act on a license amendment before holding a requested hearing, Section 202 of S. 1207 actually amends section 189a. of the Atomic Energy Act, while Section 11(a) of H.R. 4255 merely authorizes NRC to act with respect to its appropriation for fiscal years 1982 and 1983, thus allowing NRC's authority to expire at the end of the authorization period. Therefore, in this regard, S. 1207 is clearly preferable.

Second, both Section 202 of S. 1207 and Section 11(a) of H.R. 4255 require NRC to consult, in connection with each request for a license amendment, with the State in which the facility is located. Section 301, which complements Section 202 of S. 1207, specifies that, within ninety days of enactment, NRC must promulgate regulations establishing procedures for consultation with States. Report No. 97-113, accompanying S. 1207, clearly specifies the elements of the procedures, including the rights States will not have: such as the right to veto an NRC determination; a right to a hearing before the amendment becomes effective; and a right to insist upon postponement of a determination. Section 11(a) of H.R. 4255 requires NRC not only to consult with the State, where practicable, but also to give it notice before issuing an amendment. That section specifies that the consultation shall not be construed to delay the effective

date of the amendment; but there is no specificity about the elements of State consultation, nor is there the recognition that an absolute requirement for prior notice to the State on each amendment occasionally may delay issuance of an amendment. Though S. 1207 contains a time limit for promulgating regulations, which, by the way, we can meet easily, there is no ambiguity about the consultation procedures -- as there might be with H.R. 4255 -- and there is no corresponding State notice provision. On balance, therefore, S. 1207, combined with its accompanying report, is preferable.

Third, Section 301 of S. 1207 requires NRC to promulgate regulations, within ninety days of enactment, establishing criteria for providing or dispensing with prior public notice and public comment on its no significant hazards consideration determination with respect to each license amendment. The accompanying report explains the reasons for such notice and comment procedures and gives NRC some leeway in formulating and implementing the criteria. This notice provision, incidentally, is for receiving public comment on the no significant hazards consideration determination and not for providing an opportunity for a prior hearing as otherwise required under section 189a. Section 11(b) of H.R. 4255, on the other hand, contains a cumulative, as opposed to individual, public notice provision which is not connected to a request for public comment. Moreover, it is not tied to a time limit for promulgating regulations. It specifies that at least every thirty days NRC must publish notice of amendments it has issued or proposes to issue including notice of all amendments not previously noticed. Both S. 1207 and H.R. 4255 have advantages and disadvantages. Though S. 1207 sets a time limit for promulgating regulations (which we can meet), it gives the Commission more leeway to structure the noticing provision than does H.R. 4255. Its main drawback is that NRC would have to await public comment before it could issue an amendment, except in those instances where it has to act quickly to avoid the shut-down or derating of a plant. Assuming a thirty-day comment period, NRC normally would not be able to issue an amendment in less than forty-five to sixty days. At first glance, the cumulative notice provision of H.R. 4255 appears to be simpler than the individual notice provision of S. 1217; however, unless NRC chooses either to postnotice all amendments (which it already does -- see 10 CFR 2.106) or prenotice all amendments (which could delay their issuance because of the cumulative aspect), the tracking system for H.R. 4255 may require considerable time, effort, and paperwork to administer. S. 1207 appears preferable if public comment is desired, while H.R. 4255 may be preferable if an after the fact, cumulative, public notice provision is sought. The Conference Committee will have to grapple with this issue.

Finally, both Section 301 of S. 1207 and Section 11(c) of H.R. 4255 require NRC, within ninety days of enactment, to promulgate standards for determining whether a license amendment involves no significant hazards consideration. Section 202 of S. 1207 ties NRC's authority (to issue and make license amendments immediately effective) to the promulgation of regulations establishing the standards (implicitly assuming the applicability of the Administrative Procedure Act), while Section 11(c) of H.R. 4255 explicitly requires NRC to promulgate standards in accordance with the rulemaking provisions of that Act. On the whole, there is no significant difference between the two bills in this respect, since the standards are ready for promulgation as a final rule.

If you have any questions about the legislation, please feel free to call Thomas F. Dorian of my staff (492-8690).

Howard K. Shapar
Executive Legal Director

AA61-2 PDR

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

T. Doran
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December 10, 1982

Dockets Nos. 50-313
and 50-368

Mr. William Cavanaugh, III
Senior Vice President
Energy Supply
Arkansas Power & Light Company
P. O. Box 551
Little Rock, Arkansas 72203

Dear Mr. Cavanaugh:

The Commission has requested the Office of the Federal Register to publish the enclosed "Notice of Consideration of Issuance of Amendment to Facility Operating Licenses" for the Arkansas Nuclear One (ANO), Units Nos. 1 and 2. This notice relates to your license amendment application dated November 5, 1982, which would permit the expansion of the spent fuel pool storage capacity for Units 1 and 2.

This expansion would be accomplished by replacing the existing spent fuel storage racks with new high density storage racks. Reracking the spent fuel pools would increase the ANO-1 pool storage capacity from 589 spaces to approximately 968 spaces and the ANO-2 pool storage capacity from 485 spaces to approximately 988 spaces.

Sincerely,

John F. Stolz

John F. Stolz, Chief
Operating Reactors Branch #4
Division of Licensing

Enclosure:
Notice

cc w/enclosure:
See next page

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2pp

Arkansas Power & Light Company

cc w/enclosure(s):

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Little Rock, Arkansas 72203

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Arkansas Nuclear One
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Mr. William Johnson
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Honorable Ermil Grant
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Regional Radiation Representative
EPA Region VI
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611 Ryan Plaza Drive, Suite 1000
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UNITED STATES NUCLEAR REGULATORY COMMISSION

DOCKETS NOS. 50-313 AND 50-368

ARKANSAS POWER AND LIGHT COMPANY

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO FACILITY OPERATING LICENSES

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-51 and NPF-6, issued to Arkansas Power & Light Company (the licensee), for operation of Arkansas Nuclear One, Units Nos. 1 and 2 (ANO-1 and ANO-2), located in Pope County, Arkansas.

In accordance with the licensee's application for amendments dated November 5, 1982, the amendments would permit the expansion of the spent fuel storage capacity for ANO-1 and ANO-2. This expansion would be accomplished by replacing the existing spent fuel storage racks with new high density storage racks. Reracking the spent fuel pools would increase the ANO-1 pool storage capacity from 589 spaces to approximately 968 spaces and the ANO-2 pool storage capacity from 485 spaces to approximately 988 spaces.

Prior to issuance of the proposed license amendments, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By January 20, 1983 , the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2.

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If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions

which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (In Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number);(date petition was mailed); (ANO1&2); and (publication date and page number of this FEDERAL REGISTER NOTICE). A copy of the petition should also be sent to the Executive Legal Director, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and to

Nicholas S. Reynolds, Debevoise & Liberman, 1200 17th Street, N.W., Washington, D.C 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated November 5, 1982, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Arkansas Tech University, Russellville, Arkansas.

Dated at Bethesda, Maryland, this 10th day of December 1982.

FOR THE NUCLEAR REGULATORY COMMISSION

John F. Stolz, Chief
Operating Reactors Branch #4
Division of Licensing

AA61-2 PDR

**NORTHEAST UTILITIES**

THE CONNECTICUT LIGHT AND POWER COMPANY
WESTERN MASSACHUSETTS ELECTRIC COMPANY
HOLYOKE WATER POWER COMPANY
NORTHEAST UTILITIES SERVICE COMPANY
NORTHEAST NUCLEAR ENERGY COMPANY

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February 9, 1983

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The Honorable Nunzio J. Palladino
Chairman
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

NRC Rulemaking Regarding No
Significant Hazards Consideration

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Dear Mr. Chairman:

The NRC Staff recently submitted to the Commission in SECY-83-16 another draft proposal for determining whether operating license amendments involve "no significant hazards consideration." There is a portion of the Staff's proposal that we find troublesome, and we want to invite your attention to it. In that SECY document, the Staff included "reracking of a spent fuel storage pool" as a specific example of an OL amendment that is "likely" to involve significant hazards. SECY-83-16, Enclosure 3 (January 13, 1983).

We believe as a technical matter there is no justification for presuming that reracking involves significant hazards. During the past eight years, the NRC has approved over eighty (80) applications for reracking of power reactor spent fuel pools. To the best of our knowledge in each instance where a reracking application was pursued to completion by the licensee, the NRC has found that (1) "the actions can be taken with no sacrifice of public health and safety," and (2) "the environmental impact . . . was negligible." See e.g., Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575, August, 1979) at p. ES-5 ("FGEIS"). In all cases preparation of an environmental impact statement was found to be unnecessary. Such findings are consistent with the conclusions reached by the Staff in its FGEIS, where it stated that the "storage of spent fuel in water pools has an insignificant impact on the environment." Id. at p. 8-2.

To the best of our knowledge, the NRC Staff has never been asked to make a judgement on any specific docket as to whether a proposed reracking involved a significant hazards consideration. Past practice did not address whether reracking involved significant hazards, apparently because the early reracking applications (filed in around 1974) involved unreviewed technology, and thus were rightfully prenoticed ( i.e., notice was published in the Federal Register before issuance of the amendment). This precluded an actual technical analysis of whether reracking in fact involves a significant hazards consideration prior to publication of prenotice.

2/14...To EDO for Approp. Action.....SECY-83-1455

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Thereafter, on September 10, 1975, the Commission issued a policy statement regarding spent fuel storage, see 40 Fed. Reg. 42801 (1975), in which it noted that spent fuel storage can more effectively "be examined in a broader context" and, thus, determined that a generic environmental impact statement on the handling and storage of spent fuel should be prepared. In the interim, the Commission stated that case-by-case treatment of all applications for expansion of storage capacity by reracking (or other means) was to be accorded, with focus placed upon five enunciated factors. Id. at 42802. As to the issue of prenotice, the policy statement was silent. However, it appears that an internal decision was made by the Staff that prenotice was required so as to afford the public an opportunity to comment on the five factors. Accordingly, the prenotice procedure, initially utilized because of the developing state of the technology, was kept in place so as to comport with what was thought to be required by the Commission's policy statement.

In August of 1979, the final generic environmental impact statement was published (FGEIS, supra) and the Commission withdrew its 1975 policy statement. See 46 Fed. Reg. 14506 (1981). Since that time, the matter of prenotice has never been raised and the Commission has continued the practice of prenoticing spent fuel reracking applications. In short, it appears that what was once justified on the basis of new technology has been carried on to the present due to inertia and not on the basis of technical considerations.

We maintain that this past practice does not provide an adequate basis upon which to state unequivocally that reracking is likely to involve a significant hazards consideration. Indeed, a comparison of the findings made in reracking applications[1] to the three significant hazards criteria set forth in the Staff's draft proposal clearly indicates that reracking falls outside the scope of these criteria and thus, as a general matter, should not be viewed as an activity involving a significant safety hazard consideration.

We would prefer to see safety decisions based upon technical considerations, and we are unaware of what technical motives support the proposed staff action. We assert that there is no technical justification for the Staff's position that reracking should be presumed to involve a significant

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(1) Examples of relevant safety findings that appear routinely in Staff Safety Evaluation Reports regarding spent fuel pool reracking applications are:

- The installation and use of the new fuel racks does not alter the potential consequences of the design basis accident for the spent fuel pool.
- The installation and use of new racks (high-density or poison) will not change the radiological consequences of a postulated fuel handling accident or spent fuel cask drop accident in the spent fuel pool area from those values reported in the FES supporting the issuance of an operating license.

hazards consideration. If the Staff's position is adopted, it could subject licensees attempting to expand spent fuel storage capacity through the use of safe, proven reracking technology to the unnecessary and unfair burden of lengthy and costly hearings before an OL amendment is issued.

Thus, we strongly urge that you delete from the Rule the reference to reracking as an example of an OL amendment that involves a significant hazards consideration. We recognize that applications for reracking must be reviewed to determine whether a significant hazards consideration is involved. We also recognize that such applications could involve a significant hazards consideration in some cases. However, we believe that the determination of significant hazards consideration should be made on the basis of the facts in each case rather than prejudged as a matter of policy.

We appreciate the opportunity to present our views to you on this important question and are prepared to discuss this matter further if you should need additional information.

Very truly yours,

NORTHEAST UTILITIES SERVICE COMPANY

W. G. Counsil
Senior Vice President

cc: Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine

bcc: G.H. Cunningham
W.J. Dircks
M.G. Malsch
J. Scinto
V. Stello