

AA61-2

PDR

AFFIRMATION

RESPONSE SHEET

cc: VStello
JRoe
SWIPEED

W
T. Dorian

GCunningham
HDenton
FH

*Jim -
Let me know if
this is a problem to you
1/17*

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER BERNTHAL

SUBJECT: SECY-85-209A - FINAL REGULATIONS ON NO SIGNIFICANT HAZARDS CONSIDERATION (THE "SHOLLY AMENDMENT")

APPROVED DISAPPROVED _____ ABSTAIN _____

NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS:

I approve the final rule package as proposed, with one exception. On page 91, under the Section "Backfit Analysis," several reasons are given why preparation of such an analysis is not required under the backfit rule. I would strike the last reason given, which seems to suggest that procedural changes are not backfits within the meaning of the new rule. Given the backfit rule mess, I do not believe that is correct. In any case, why get into a controversy over it?

I also agree with the other comments of OGC.

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Samuel J. Chilk
SIGNATURE

Entered on "AS"

YES NO

1/15/86
DATE

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



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

AA61-2 PDR

ETD
WFO
① T. P. Brian
② c file

January 9, 1986

MEMORANDUM FOR: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech

FROM: MB for MGW Martin C. Malsch
Deputy General Counsel

SUBJECT: COMMENTS ON THE STAFF'S PROPOSED
FINAL SHOLLY REGULATIONS (SECY-85-209A)

We offer the following five brief comments on the proposed final rule package:

- 1) The staff paper suggests proposed changes to Atomic Energy Act section 189a. SECY-85-209A at 3-4. The language appears to be a good start toward alleviating some of the problems which the NRC staff seems to have encountered in administering the amendment notice requirements.

However, the Commission should weigh carefully the need for legislation in this area. Since any proposed legislation could easily have the appearance of decreasing opportunities for public participation in nuclear licensing, the legislative package will need to make a fairly strong case that the statute is imposing unnecessary burdens on the agency and licensees. If the Commission approves the staff's approach, we will work with staff to refine the language and to develop as strong a legislative package as possible.

- 2) One commenter objected to the imposition of additional fees to finance activities involving no significant hazards determinations, asserting that licensees wouldn't be the identifiable or even primary beneficiaries of these activities. Id. at 64-5. We suggest the response which follows as a replacement for staff's:

It is clear that the issuance of a license amendment is a "special benefit" for the licensee, and that the Commission is therefore authorized to impose a fee to recover the cost to the agency of

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conferring that benefit. Mississippi Power & Light Co. v. Nuclear Regulatory Commission, 601 F.2d 223, 227 (5th Cir. 1979). The notice and consultation process established in the present rulemaking, together with all other aspects of the no significant hazards consideration determination, reflects statutory requirements that must be met in the issuance of a license amendment. Accordingly, the NRC resources expended in this part of the amendment proceedings are costs necessarily incurred by the agency on behalf of the licensee. Thus the Commission may include these costs in its fee for issuing the amendment.

While the Commission believes that the public as well as the licensee will benefit from this clarification and improvement in the amendment process, the "special benefit" of receiving a particular license amendment pertains to the licensee alone, and the Commission may therefore assess the full cost of providing it. Mississippi Power & Light, supra, at 230.

- 3) We do not believe that staff's analysis regarding the application of the backfit rule (id. at 91) is in accord with that rule. We would delete staff's analysis and replace it with the simple statement that because the final rule imposes no requirements on licensees beyond those which were already imposed in the Interim Final Rule, the final rule is not a backfit and no backfit analysis is required.
- 4) Staff's addition of a provision intended to preclude adjudicatory board litigation of the staff's no significant hazards determinations is worthwhile. See § 50.58(b)(6), id. at 99. However, the language should be clarified, as follows:

No petition or other request for review of or hearing on a Director's significant hazards consideration determination will be entertained by the Commission. The director's determination is final, subject only to the Commission's discretion, on its own initiative, to review the staff's determination.

- 5) The rulemaking notice should be reviewed before publication to eliminate grammatical errors and poor word usage.

cc: EDO
ELD
OPE
SECY