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May 2, 1983

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attn: Docketing and Service Branch

Re: Interim Final Rules on "Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations" and "Notice and State Consultation" (48 Fed. Reg. 14,864-80)

Dear Mr. Chilk:

On April 6, 1983, the Commission published "interim final rules" on the foregoing subjects and requested comments thereon by May 6, 1983. In response to such request, these comments are being submitted on behalf of Iowa Electric Light and Power Company and Florida Power & Light Company.

For the reasons set forth in more detail below, we suggest that the regulations and the Commission's intent be clarified as to the situations that could constitute an "emergency" or an "exigency," as to the transitional provisions applicable to requests for amendments received prior to May 6, 1983, and as to the use of post-notices under Section 2.106 in lieu of pre-notices under Section 2.105 in specified circumstances.

"Emergency Situations"

Under new 10 C.F.R. § 50.91(a)(5), the Commission may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for hearing "[w]here the Commission finds that an emergency situa-

tion exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant . . . ."

Neither "shutdown" nor "derating" is defined in the regulation.*/ Altnough neither term is precise, in our view the logical intent must be for the regulation to include any interruption or reduction in the normally expected supply of electricity from a plant which has been in operation, under circumstances where such interruption or reduction would cause unnecessary economic injury or impact on a generating system. Thus, an "emergency" either could result from an interruption of operation or decrease in operating capacity or could exist because a plant, which has been shutdown or operated in a derated mode, is not permitted to return to operation or to increase its power output.

However, a narrower -- and we believe mistaken -- reading of the terms "shutdown" and "derating" might attempt to limit the regulation only to circumstances where a plant is actually in operation and suspension of operation or reduction of power generation would result unless the license amendment is timely issued. So interpreted, the provision would not apply to an amendment needed prior to return to power by a plant which has not been in operation (e.g., because of refueling, maintenance, interruption of transmission capacity, etc.). Nor would it apply to an amendment required prior to an increase in power output by a plant which, for any one of a number of similar reasons, is operating at a lower level of generation.

Because of this ambiguity, we strongly suggest that Section 50.91(a)(5) be amended to make it clear that an emergency situation can exist whenever it is necessary that a plant not in operation return to operation or for a derated plant to operate at a higher level of generation.

We believe that there is no impediment to this proposal in either Public Law 97-415 itself or its legislative history.

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*/ The discussions of emergencies in the Statement of Considerations (48 Fed. Reg. 14,876, 14,877) does not assist in this interpretative effort.

On the contrary, our proposal corresponds with our view of the legislative intent.

It is clear that Section 12(a) of that legislation does not stand in the way of the proposal. The only relevant language is contained in the new Section 189a(2)(C) which directs the Commission to

> promulgate regulations establishing . . . (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved;

The provision does not define "emergency" or "emergency situations" but it does direct the Commission to "take into account the exigency of the need for the amendment involved." So far as economic need and system reliability are concerned, when power is needed the "exigency of the need" is essentially no different whether power is obtainable from a plant which can remain in operation or be operated at a high power level or from a plant which can be returned to operation.

We are aware that the language of Section 50.91a(5) is derived from similar language in the Conference Report:

> In the context of subsection (2)(C)(ii), the conferees understand; (sic) the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor. (The Commission already has the authority to respond to emergencies involving imminent threats to the public health or safety by issuing immediately effective orders pursuant to the Atomic Energy Act or the Administrative Procedure Act. And the licensee itself has authority to take whatever action is necessary to

respond to emergencies involving imminent threat to the public health and safety.)*/

However, the language of the first sentence quoted above has no more precision than does the regulation. On the other hand, the immediately following language contained in the parentheses makes it clear that the term "emergency situations" does not involve "imminent threats to the public health or safety" in the sense that those terms are used in the Atomic Energy Act. Rather the "emergency situations" must relate to other kinds of events and situations, including dislocation because of power outages or inability to return a plant to operation and of economic losses resulting from the unavailability of an economic means of generating power.

For the foregoing reasons, we recommend that Section 50.91(a)(5) be amended by inserting after the words "derating or shutdown of a nuclear power plant" the following words: ("including any prevention of either resumption of operation or increase in power output)".

"Exigent Circumstances"

At 48 Fed. Reg. 14,877 the Commission explains an "exigency" as a situation "where a licensee and the Commission must act quickly and where time does not permit the Commission to publish a Federal Register notice soliciting public comment or to provide 30 days ordinarily allowed for public comment." We agree with the breadth of that definition by the Commission. However, the two examples then given by the Commission appear to us unnecessarily narrow since both involve obvious improvements in safety and both involve potentially lost opportunities to implement such improvements during a plant outage. Although no amendment to the regulations is required, we suggest that the Commission make clear that these examples were not meant to be limiting in any respect, and that a determination of "exigency" can be considered whenever a proposed amendment involves no significant hazards consideration and the licensee can demonstrate that avoiding delay in issuance will provide a significant benefit (safety, environmental, reliability, economic, etc.).

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*/ H.R. Rep. No. 884, 97th Cong., 2nd Sess. 38 (1982).

Amendment Requests Received Before May 6, 1983

In its statement of considerations (48 Fed. Reg. 14,877), the Commission specified that, with respect to amendment requests received before May 6, 1983, the Commission intends to keep its present procedures and not provide prior notice of amendments that involve no significant hazards considerations. In our view, not only is this approach valid and appropriate under the statute, but it is essential in order to avoid both the potential logjam in NRC licensing activities that could result from the publication of an omnibus listing of pending amendment requests and the unnecessary delays that could result in the processing of any particular pending request. To assure that the foregoing Commission intent is carried out, however, we believe that the newly adopted Section 2.105(a)(4)(i) should be clarified. As promulgated, the section does not explicitly distinguish between requests received before May 6 and those received thereafter. In order to avoid reliance solely on the Commission's statement of its intent we suggest that the regulation be amended as follows:

In Section 2.105(a)(4)(i), delete the words "though it will provide notice of opportunity for a hearing pursuant to this section," and substitute the following: "though it will publish a notice of proposed action pursuant to this section (except in the case of an application for amendment received prior to May 6, 1983, where it will instead publish a notice of issuance pursuant to § 2.106),".

Several of the other contemporaneously adopted regulations also do not deal explicitly with amendment requests filed before May 6, 1983. Although corresponding clarifications could be considered, we do not believe that they are necessary. In order to avoid any misunderstanding as to the Commission's intent, however, we urge that the Commission explain clearly the overall effect of the new regulations on amendment requests still pending on May 6. For the convenience of the Commission, we enclose a proposed explanation which could be published in the statement of considerations dealing with the revision of the interim rule.

Issuance of Post-Notices Under Section 2.106

It is the obvious intent of the new Section 2.105(a)(4)(ii) that, under the circumstances there specified (a determination of an emergency or exigent situation and an amendment involving no significant hazards consideration), a notice of proposed action would not be published under Section 2.105 and, instead, a notice of issuance would be published under Section 2.106. However, to avoid the possible misunderstanding that the Section 2.106 notice is in addition to, and not a substitute for, a Section 2.105 notice, we suggest that the regulation be amended as follows:

In Section 2.105(a)(4)(ii), delete the words "it will provide notice of opportunity for a hearing pursuant to § 2.106" and substitute the following: "instead of publishing a notice of proposed action pursuant to this section it will publish a notice of issuance pursuant to § 2.106".

Although this amendment might be viewed as an overabundance of caution, we believe it to be desirable to avoid possible future controversy.

Very truly yours,

Maurice Axelrad

Lowenstein, Newman, Reis
& Axelrad

KHS:jcj
Attachment

bcc: Mr. Thomas F. Dorian

ATTACHMENT

Proposed Statement Pertaining to Amendment Requests Received Before May 6, 1983

As was indicated in the statement of considerations (48 Fed. Reg. 14,877), with respect to amendment requests received before May 6, 1983, the Commission intends to keep its present procedures and not provide prior notice of amendments that involve no significant hazards considerations. Since the new Section 2.105(a)(4)(i) adopted in the interim final rule did not implement our intent with complete clarity, we are revising the final version to make it more explicit.*/ Thus, as to any such application for amendment still pending on May 6, the NRC, if the standards of Section 50.58 are satisfied, will issue the amendment and publish a notice of issuance pursuant to Section 2.106. If a hearing is requested before such notice is published, the amendment may nevertheless still be made immediately effective and the hearing granted thereafter.

No corresponding clarification of Section 2.105(a)(4)(ii) is required since, with respect to applications received before May 6, 1983, which involve no significant hazards consideration, the present procedures of the NRC (which remain applicable thereto) do not require a determination that an emergency or exigent situation exists in order to omit a notice of opportunity for a hearing prior to NRC action.

Similarly, although Sections 50.58(b) and 50.92 do not explicitly distinguish between applications received before May 6, 1983, and those received thereafter, no clarification of these sections is required since Section 2.105(a)(4)(i), as explained above, now makes the Commission's intent clear.

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*/ We are also clarifying that the notice published under Section 2.105 is a notice of proposed action, which includes a notice of opportunity for a hearing.

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Mr. Thomas F. Dorian

NORTHEAST UTILITIES

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PR-50 (17)
(48FR 14864)

May 10, 1983

Docket Nos. 50-213
50-245
50-336
50-423
B10784

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
1717 H Street
Washington, D. C. 20555

Gentlemen:

Haddam Neck Plant
Millstone Nuclear Power Station, Unit Nos. 1, 2, & 3
Comments on Interim Final Rules
Notice and State Consultation
Standards for Determining Whether License
Amendments Involve No Significant Hazards Considerations

In 48FR14864 and 48FR14873, the Commission promulgated interim final rules on the above captioned subjects, in accordance with the provisions of Public Law 97-415. Connecticut Yankee Atomic Power Company (CYAPCO) and Northeast Nuclear Energy Company (NNECO) hereby provide the following comments on these interim final rules.

General Comments

Our general perspective is that these regulations will not significantly, if at all, improve the safety of nuclear power plants. The reviews and evaluations previously utilized to process license amendments were adequate to assure continued public health and safety. As with many other previous NRC initiatives, these new regulations will require the use of our limited resources in areas which we perceive will not enhance nuclear safety. The additional resources being expended to fulfill these new regulations are therefore being applied at the expense of other voluntary activities which could otherwise be accomplished. However, we fully recognize that these rules are being implemented to fulfill congressional mandates, and that under these circumstances the NRC has considerably less latitude regarding the final scope and specific provisions of these rules than would otherwise be the case. Given that Congress has required their implementation, we offer the following comments and observations in the interest of minimizing their negative impact.

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The trend within NRC for the past several years has been to dramatically increase the scope and volume of Technical Specifications. Over the course of time, the Technical Specifications have become cluttered with a considerable amount of superfluous detail not truly appropriate or necessary to satisfy the intent of 10CFR50.36. One of the by-products of this trend is that more license amendments are being processed than nuclear safety considerations warrant.

The Commission apparently recognizes this problem and has published a proposed rule (47FR13369) which is stated to be directed at addressing this concern. Our general endorsement of this concept and other pertinent observations were provided in previous correspondence(1). The subject interim final rules further serve to heighten the importance of taking steps to alleviate this situation in the near term. However, we are concerned that the Commission may not have fully recognized the synergistic effects which would occur if both these proposals are implemented in their current form. There are also a number of other issues where the implications of these interim final rules either lack clarity or have the potential to yield additional adverse synergistic effects. The balance of this letter is intended to identify and discuss these matters.

Interpretation of 10CFR Part 170

In a recent proposed rule (47FR52454), the NRC has proposed to amend the existing regulations governing payment of fees associated with, among other things, processing of license amendment requests. The key element of the proposed changes relates to assessment of fees based upon actual NRC resources expended rather than a fixed fee for various classes of amendments.

If the Part 170 changes are issued as proposed, after May 6, 1983 resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It is our view that licensees would not be the "identifiable recipient of benefits" resulting from this more involved process. As such, licensees should not be assessed fees for any expenses resulting from the public notice, State consultation, and other consequential or follow-up activities which may result. The legislative history behind Public Law 97-415 makes it clear that licensees are not the prime beneficiaries of this new license amendment process. Therefore, licensees should not be assessed additional fees to finance this activity.

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(1) Previous submittals addressing this matter include the following:

- o W. G. Counsil letter to the Secretary of the Commission dated September 8, 1980, Proposed Rulemaking Regarding Technical Specifications.
- o W. G. Counsil letter to the Secretary of the Commission dated May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.
- o W. G. Counsil letter to the Secretary of the Commission dated April 25, 1983, Proposed Rulemaking Regarding Technical Specifications.

Interpretation of the Term "Emergency"

The term "emergency" suggests the occurrence of a nuclear plant situation where public health and safety is in immediate jeopardy. The interim final rules use the term "emergency" to describe situations where failure to act in a timely fashion on a proposed license amendment would result in derating or shutdown of a plant. While in isolation this term may be appropriate, its use in this context may result in considerable confusion, especially in light of a recently issued final rule (48FR13966) regarding departures from license conditions or technical specifications in an "emergency" situation.

A member of the NRC Staff has called this potential conflict in terminology to our attention, and we agree that it is desirable to eliminate any potential confusion before it occurs, especially when the public may be asked to provide comments via a toll-free hotline or in response to newspaper articles describing a power plant "emergency". In this forum, the term "emergency" carries with it a connotation not accurate when describing license amendments which warrant expedited treatment. Frequently the situations which arise have very little nuclear safety significance but the wording of the technical specifications is such that a plant shutdown would be necessary within a matter of hours or days unless an amendment is issued promptly.

Use of the term "emergency" in the context of the final rule (48FR13966) is more appropriate from our perspective. The stated purpose of that rule is to allow licensees to take reasonable action that departs from a license condition or technical specification when such action is immediately needed to protect the public health and safety. While we are hopeful that such situations would rarely if ever arise, the situations contemplated are authentic emergencies which have some safety significance. The rule correctly recognizes that not all plant conditions can be anticipated in the license and technical specifications, and provisions have been taken to allow departures.

In light of the above, we propose that the term "emergency" be reserved exclusively for use in the context of 48FR13966, and that alternate wording be developed for use in the interim final rule. For instance, the initial portions of 10CFR50.91(a)(5) could be reworded as follows:

> "Where the Commission finds that plant conditions exist warranting expedited treatment of a proposed license amendment, in that failure ....."

Other provisions of the interim final rules which currently use the word "emergency" could similarly be reworded. We believe this recommendation will eliminate both an unnecessary source of concern for the public and potential confusion with the provisions of 10CFR50.54(x) and 50.72(c).

Use of Media to Obtain Public Comment

In the Supplementary Information section of the interim final rule on Notice and State Consultation, the NRC describes various means of obtaining public comment under exigent circumstances. Two options specifically mentioned

include use of a local newspaper to inform residents of proposed amendments, and use of a toll-free hotline to facilitate receipt of public comment.

We are hard pressed to envision circumstances under which these measures will truly enhance nuclear safety. It is far more likely that such actions will serve to unnecessarily alarm the public. Routine power plant evolutions, which in some cases result in the need for prompt processing of license amendments, are not appropriate subjects for newspaper articles and toll-free hotlines. They imply a sense of urgency and significance which, with respect to impact on the public health and safety, is simply not there. Our concerns regarding media exposure are not conjecture or speculation, but are based on our experience including a New York Times article on the Pressurized Thermal Shock issue for one of our plants, and on adverse and unjustified media exposure regarding the Interim Reliability Evaluation Program for another of our units. We refer you to our letters to H. R. Denton and Chairman Palladino[2] for additional details on these issues.

In response to our letter to Chairman Palladino, Mr. Dircks invited us[3] to provide additional suggestions on how to more effectively deal with the issue of media use of nuclear power plant data and information. In response to that invitation and to the concerns raised by the interim final rules, we offer two recommendations.

First, use of the media to provide information on nuclear power plant operations is a delicate matter which must be carefully administered. The perspectives of the public are markedly different from those directly associated with nuclear power regulation, and these differences must be recognized in preparing media releases. In the interest of optimizing this public comment process, we recommend that the NRC consult with the licensees on a proposed release before action is taken. Licensees would have a greater degree of familiarity with both the issue at hand and with local media personnel. The NRC would of course retain the final authority in the event of an impasse, but licensee input should be solicited. This measure would also improve the ability of licensees to respond to media inquiries by allowing more time for licensees to prepare information and to ensure the availability of knowledgable personnel.

Second, we recommend that all inputs provided by the States and the public to the NRC be made available to licensees. Copies of all correspondence should be

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(2) The referenced documents are:

- W. G. Counsil letter to H. R. Denton dated, October 23, 1981, Pressurized Thermal Shock of Reactor Vessels.
- W. G. Counsil letter to N. J. Palladino dated February 16, 1983, Interim Reliability Evaluation Program.

(3) W. J. Dircks letter to W. G. Counsil dated April 11, 1983, Interim Reliability Evaluation Program.

forwarded promptly to licensees. If a hotline is established, all conversations should be taped and copies be provided to licensees. Such measures are appropriate because it is the licensees who are responsible for public health and safety, and any potentially relevant input should promptly be made available to licensees. Further, licensees invest substantial resources in public information programs and these inputs could be used to assess their effectiveness and identify potential areas of improvement. We remain dedicated to the safety of nuclear power plant operations, and we are willing to provide information to the States or the public to demonstrate our corporate commitment. We are in a better position to respond to the public's questions and comments, and should be provided all inputs provided to NRC under these circumstances.

Implications of NRC's Regionalization Plans

In 48FR12619, the NRC noticed a summary of its plans regarding regionalization of selected licensing functions. The issue which has attracted the most attention during the regional meetings and in other forums is the regionalization of certain power reactor licensing functions, with a resulting division of licensing responsibilities between NRC headquarters and the Regional Offices. We believe that such a step may prove beneficial, provided a reasonable concensus is reached regarding which functions are regionalized and which are retained at headquarters. We fully recognize that final decisions have not been reached and therefore NRC's current regionalization plans have no immediate impact on the interim final rules. However, we wish to ensure a smooth transition and believe some advance planning will facilitate the process. This matter was addressed briefly in previous correspondence(4); further clarification is provided here.

Most of the discussions we have participated in suggest that the delineation of responsibilities will be issue-oriented. Implicit in this approach is the fact that review and issuance of license amendments would also be shared. The "routine" amendments would be processed by the Regions and the "complex" amendments would be dispositioned by headquarters. Certain internal NRC memoranda(5) appear to support this type of approach. If this situation materializes without further guidance, licensees would be unsure where to direct license amendments requiring expedited treatment since by definition the plant situation would not have been previously contemplated. Given the extensive amounts of telephone contact normally associated with these situations, we believe it is desirable that communications with the responsible NRC Office be initiated from the beginning. Hence, we recommend that before any transfer of authority of facility licenses occurs, a clear understanding of the groundrules for the transfer is reached. We are confident that a mutually acceptable approach can be defined in the context of finalizing the details of the entire regionalization process.

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(4) W. G. Counsil letter to D. G. Eisenhut dated, March 24, 1983, Comments on Draft NUREG-0737 PWR Technical Specifications.

(5) J. G. Keppler memorandum to H. R. Denton dated, January 13, 1982, Regionalization of NRR Functions.
H. R. Denton memorandum to V. Stello dated February 5, 1982, Regionalization of Regulatory Functions.

Further, independent of where licensee amendments are evaluated, it is necessary that thorough and precise procedures be in place to provide a road map for the NRC Staff on the steps to be taken to promptly process a license amendment request(6). Before the NRC can establish the optimum method of regionalizing this function, it now must address the new elements of Federal Register notice coordination, public comment review, State consultation, and coping with exigent circumstances. We merely wish to avoid a situation where the Regional Offices have the responsibility of dealing with a proposal requiring prompt attention, and working level personnel are unfamiliar with any of the steps necessary to process the request. In summary, we believe that the interim final rules introduce new considerations into the evaluation of regionalizing authority to issue license amendments. These and other factors should be considered by both the NRC and the industry before a decision is reached.

No Significant Hazards Consideration - Reracking of Spent Fuel Pools

We strongly support the Commission's decision to not include reracking in the list of examples that will be considered likely to involve a significant hazard consideration.(7) It is clearly inappropriate to publish a policy which ignores and runs contrary to the documented technical NRC conclusions published in numerous Safety Evaluation Reports. A decision to classify all rerackings as actions constituting significant hazards considerations, applied to certain realistic scenarios, would yield some rather bizarre conclusions. For example, a licensee operating several facilities may have previously reracked a spent fuel pool and have therefore received a Staff SER containing the typical findings such as:

- The new racks do not alter the potential consequences of the design basis accident for the spent fuel pool, and
- The new racks will not change the radiological consequences of a postulated fuel handling accident or spent fuel caskdrop.

The same licensee may now wish to expand its spent fuel storage capacity at a sister unit using an identical design, and the Commission would find a "significant hazard" associated with a previously explicitly approved and successfully implemented design if this example was reinstated. In short, nuclear safety decisions should be reached using technical input. Significantly, adopting our recommendation would send an appropriate and interpretable signal regarding the meaning of the criteria associated with making the no significant hazards consideration determination on issues not explicitly covered in the examples.

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(6) Specific recommendations in this regard were provided in the W. G. Counsil letter to D. G. Eisenhut dated April 25, 1983, Public Law 97-415.

(7) The basis for our support was summarized in the W. G. Counsil letter to Chairman Palladino dated, February 9, 1983, Significant Hazards Considerations.

Amendments Requiring Expedited Treatment and Involving a Significant Hazards Consideration

The Commission's interim final rules identify the procedural differences between amendments involving a significant hazards consideration from those which do not. Where conditions warrant and the amendment does not involve a significant hazards consideration, there is a process available to have amendments issued on an expedited basis. However, there is no process identified to disposition amendment requests which both require expedited treatment and involve a significant hazards consideration. While we recognize that it is unlikely for such a situation to arise, it is nonetheless conceivable. The scenario takes on additional credibility when one hypothesizes a situation where ample lead time was provided, a hearing was convened, and protracted administrative delays consumed all the time originally allocated to secure regulatory approval. In these or other circumstances delaying issuance of an amendment could even run contrary to the interests of overall plant safety.

While various organizations may have differing views in the probability of such a scenario, prudence dictates that some mechanism be established to deal with this situation. One possibility would be Commission issuance of an immediately effective Order (10CFR2.204). We would welcome the opportunity to discuss this matter further with the NRC.

Treatment of Exemptions from NRC Regulations

The subject interim final rules contain no explicit reference to exemptions(8) from NRC regulations which are issued. However, we are concerned that the various methods the Commission has used to issue exemptions may result in unjustifiably complicating their disposition by subjecting all such future requests to this new OL amendment process. It is our view that exemption requests need not automatically be considered license amendments, even though the NRC has occasionally elected to notice such actions in the Federal Register and/or assign license amendment numbers to the issuing documents. Support for our position can be found from both the technical and legal perspectives.

From a technical standpoint, many exemptions which licensees are obligated to seek are the direct result of poorly worded or inappropriate regulations. Far fewer exemptions would be needed if the NRC was more sensitive to industry perspectives in its rulemaking proceedings. The most blatant example of this trend are NRC's fire protection regulations, 10CFR50.48 and Appendix R to 10CFR50. The regulated industry has already submitted hundreds of exemption requests from these regulations, and the unfortunate truth is that thousands may be dispositioned before the issue is resolved. The word exemption carries with it a connotation to the layman of a reduction in the protection of public health and

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(8) Requests for relief from NRC regulations generally filed pursuant to 10CFR50.12, or other provisions of limited applicability such as 10CFR50.48(c)(6).

safety. Of course, this is not the case. In fact, the criteria for submitting under 50.48(c)(6) are that implementation of NRC requirements would not enhance fire protection safety or may be detrimental to overall facility safety. Such issues should not, as a matter of standard practice, be elevated to the status of license amendments.

From a legal standpoint, ample precedent has been set in that there have been numerous instances in the past of the NRC issuing exemptions and not assigning license amendment numbers to the issuing documents(9). The precedent has already been firmly established and the interim final rules do not disturb this practice. Adoption of this recommendation would yield no conflict with any existing NRC regulation.

Support from our position can also be found in 10CFR170.22, schedule of fees for facility license amendments. This paragraph describes the current six classes of amendments, and identifies the required fee for review. The description for Classes III through VI contain the following:

"Amendments, exemptions, or required approvals ....."

The above wording indicates that amendments and exemptions are distinct actions, and that exemptions should not automatically be considered license amendments. In addition, the NRC has issued at least one clarification letter(10) on Part 170 in which further support for this position can be found.

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(9) Examples of this approach include the following:

D. M. Crutchfield letter to W. G. Counsil dated, April 21, 1983. Exemption related to the Annual Emergency Preparedness Exercise, Millstone Station, Units No. 1 and 2.

D. M. Crutchfield letter to W. G. Counsil dated, December 21, 1982. Inservice Inspection Relief, Reactor Coolant Pump Inspection Program, Haddam Neck Plant.

H. R. Denton letter to W. G. Counsil dated, November 11, 1981. Fire Protection Exemption, Haddam Neck Plant and Millstone Station, Unit No. 2.

(10) A July 12, 1979 letter from W. O. Miller to W. G. Counsil provided guidance for interpreting the requirements of Part 170. Enclosure No. 7 of that document makes it explicitly clear that review of proposed amendments are separate and distinct from reviews of exemption requests, even when only one safety issue is involved.

To consider all exemptions as amendments would merely add more administrative hurdles, paperwork, and time delays to an already sufficiently cumbersome process. More importantly, it would add nothing to nuclear safety. In several recent instances the NRC has either acted or proposed to act in a fashion suggesting that the need for exemptions will continue to escalate. On the issue of prompt notification systems, the NRC established a deadline knowing with virtual certainty that several licensees would be incapable of complying. In the proposed rule on shift staffing (47FR38135), the NRC described how licensees could merely seek exemptions if they could not meet the proposed deadline. Appendix E to 10CFR50 requires annual emergency planning exercises, even though the lead governmental agency on this issue, FEMA, believes a lesser frequency is adequate. Often the annual frequency cannot be met because FEMA, the States, the local communities, other involved agencies cannot support that schedule.(11) Even when the licensee is not responsible for the deferral, the licensee is obligated to seek and justify the exemption. We believe that no additional obstacles should be erected in the exemption process, and we urge the NRC to let nuclear safety considerations play a paramount role in reaching a decision in this regard.

Relationship to Proposed Rule on Technical Specifications for Nuclear Power Reactors

In 47FR13369, the NRC proposed to amend existing regulations governing Technical Specifications by introducing a bi-level system of Technical Specifications and Supplemental Specifications. Only the former would be made directly a part of the operating license, and any changes would continue to require prior NRC approval. According to the explanation provided in the Federal Register notice, the Supplemental Specifications can be changed by the licensee within certain bounds and under prescribed conditions. A process similar to plant changes made under 50.59 is envisioned.

The major difficulty we forsee when looking at this process in the context of the interim final rules concerns proposed 10CFR50.36(f)(7). Even though the Supplemental Specifications would not be a part of the license, there are conditions (described in 50.36(f)(7)) under which proposed changes must be treated as license amendments and applications must be filed pursuant to 50.90. It is unclear why applications for license amendments must be submitted to change a document which is to be designated not a part of the operating license. There are also implications in proposed 50.54(x)(12) of instances where changes to the Supplemental Specifications may involve license amendments in that "prior Commission approval" is required.

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(11) Additional examples of this trend can be found in the W. G. Counsil letter to the Secretary of the Commission dated, February 2, 1983, Comments on the Proposed Rule Regarding Revision of License Fee Schedules.

(12) Apparently to be re-designated in light of the change issued in 48FR13966, which promulgates a different provision designated as 50.54(x).

While the above questions need to be resolved independent of the interim final rules, they acquire additional significance in light of the new license amendment process. The attractiveness of this proposed rule is diminished if a significant percentage of changes to the provisions which would be included within the Supplemental Specifications have to be processed as amendments, especially in light of these interim final rules. Among the comments we submitted previously(13) on this proposed rule, we suggested that the constraints within which changes could be implemented by the licensee are unnecessarily restrictive. Specific recommendations regarding relaxation of the proposed criteria were also provided.

Question of Retroactivity

The interim final rules become effective on May 6, 1983. In recent conversations with the Staff, we have been verbally informed that the NRC intends to process all amendment requests not issued by May 6, 1983 by following the steps contained in the interim final rules. We find such a position to be totally inappropriate and, in fact, contrary to the rule itself. We believe that all amendment requests docketed by May 6, 1983 should be dispositioned using the conventional (pre-interim final rule) process.

The new 10CFR50.91 contains the following paragraph:

> "The Commission will use the following procedures on an application received after May 6, 1983 requesting an amendment to an operating license ....."

The Supplementary Information Section further clarifies the statement in the rule as follows:

> "Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and not provide notice for public comment on amendments on which the Commission has not acted before the effective date of the interim final rule."

The above explanation is unambiguous and, when coupled with the previously quoted excerpt from the new 50.91, leaves no doubt that pending amendment requests should be processed using the original procedures. No explanation for any other approach has been offered, and we strongly believe that the statements in the rule should be adhered to.

Criteria Used to Make the No Significant Hazards Consideration Determination

The NRC is undoubtedly aware of the strong similarity between the criteria to be used to make the no significant hazards consideration determination with the criteria of 50.59 which define the tests associated with making the unreviewed safety question determination. While we offer no explicit comments on the

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(13) W. G. Counsil letter to the Secretary of the Commission dated, May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.

actual criteria (vs. their interpretation) for making the former determination, the interim final rule has raised an important question regarding the interpretation of the criteria in 50.59.

The most important difference between the two sets of criteria relates to the absence of the word "significant" in either 50.59(a)(2)(i) or 50.59 (a)(2)(iii). When interpreted literally, the absence of the word significant results in an extremely rigid set of criteria which unjustifiably complicates the process of implementing changes to facility design or procedures.

To illustrate this point, the following examples are presented. The legal limit on site boundary dose for a certain accident may be 300 rem. The licensing basis analysis for this event may have a dose consequence of 0.001 rem, many orders of magnitude below the regulatory limit. A design change may result in a doubling of the calculated dose, which constitutes an "increase in the consequences of a previously analyzed accident". This situation could result in a positive unreviewed safety question determination, when in fact this safety significance of the change is trivial. One example of such a change concerns the transition from manual to automatic initiation of auxiliary feedwater systems for PWR's.

Similarly, the probability of a given accident resulting in a core melt may be 10^{-7}, several orders of magnitude below the proposed safety goal. A plant design change may increase this probability by a factor of 2, yet not have any significant impact on the overall probability of core melt for the facility. It is our view that this situation should not result in a positive unreviewed safety question determination, yet a literal interpretation of the currently phrased 50.59 has this effect.

The criteria of 50.59 can be interpreted a number of ways, and our review has revealed that little if any relevant guidance from the NRC exists in this regard. Consequently, we believe that the most appropriate action is to formally amend the first and third criteria as follows:

- If the probability of occurence where the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be significantly increased,

- If the margin of safety as defined in the basis for any technical specification is significantly reduced.

We believe these changes would streamline the process by eliminating ambiguity and reducing the number of positive unreviewed safety question determinations and consequently reducing the volume of paperwork required, yet nuclear safety considerations would not be compromised. These changes would clearly place the responsibility for nuclear safety where it belongs, in the hands of licensees.

We intend to discuss this recommendation with members of the Staff and, if appropriate, file a petition for rulemaking to accomplish this objective.

Looking at the license amendment situation from a more global perspective, it has become eminently clear that far too many license amendments are being processed using increasing complex procedures. Several independent alternatives, or a combination of them, should be pursued to alleviate this situation. One alternative identified above is to relax the criteria governing what constitutes an unreviewed safety question. A second approach is conceptually identified in the proposed rulemaking on Technical Specifications, involving the creation of a bi-level system of specifications. A third alternative would be to establish a system whereby many of the provisions currently contained in the Technical Specifications could be amended by the licensee without explicit prior NRC approval. The common theme behind each of these alternatives is a reduction in the paper pushed to implement plant changes and license amendments with an equivalent or improved assurance of nuclear safety. The objective is to clearly articulate that licensees have the responsibility for plant safety, and the NRC functions in an audit-only role whenever possible. We suggest that these possibilities be explored further to bring the optimum solution to fruition.

Interpretation of Criteria Used to Make the No Signification Hazards Consideration Determination

The pivotal word in three criteria used to make the no significant hazards consideration determination is the word "significant". Obviously this word can connote different meanings to different people. We believe that licensees are best qualified to interpret this term in the context of their own amendment requests, and consequently the Commission should avoid publishing rigid "guidance" documents in this regard. We are currently preparing a guidance document for our use internally, and its purpose will be to ensure company-wide consistency without prescribing a cookbook approach.

For example, it is inappropriate to specify a percentage change above which the change becomes "significant" in all circumstances. When the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant. When the safety margin is fifteen percent, a comparable percentage reduction may in fact be significant. The cummulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

In addition, our guidance document will provide information regarding the "design basis envelope" for our facilities. Our accident probability or consequence determinations will be limited to our design basis requirements and other credible scenarios and not to all hypotheses of third-party reviewers.

Conclusion

We appreciate the opportunity to provide our comments on these interim final rules, and are available to provide further clarification if desired by the Staff.

Very truly yours,

W. G. Counsil

W. G. Counsil
Senior Vice President

PROPOSED RULE PR-50 (18)
(48 FR 14864)

Marvin I Lewis
6504 Bradford Ter
Phila Pa 19149

DOCKETED USNRC MAY 16 1983

Secretary USNRC
Docketing + Service

Dear Mr Secretary,

Please accept my late filed comments on the "No Significance Hazards Rule".

Although Congress has mandated this rule, the NRC interpretation far exceeds the powers granted by Congress. The interpretation also unduly and improperly limits "Freedom of speech." (1st amendment to the US Constitution

The Salem incident has shown that very minor changes to operating ~~[illegible]~~ procedures can have potentially draconian consequences such as an A.T.W.S. The Staff has not been able to fathom the truth that minor changes can lead to severe health and safety consequences

Marvin I. Lewis

DS10
add: Thomas F. Dorian
OELD MNBB

5/18/83 pd

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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May 10, 1983

Docket Nos. 50-213
50-245
50-336
50-423
B10784

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
1717 H Street
Washington, D. C. 20555

Gentlemen:

Haddam Neck Plant
Millstone Nuclear Power Station, Unit Nos. 1, 2, & 3
Comments on Interim Final Rules
Notice and State Consultation
Standards for Determining Whether License
Amendments Involve No Significant Hazards Considerations

In 48FR14864 and 48FR14873, the Commission promulgated interim final rules on the above captioned subjects, in accordance with the provisions of Public Law 97-415. Connecticut Yankee Atomic Power Company (CYAPCO) and Northeast Nuclear Energy Company (NNECO) hereby provide the following comments on these interim final rules.

General Comments

Our general perspective is that these regulations will not significantly, if at all, improve the safety of nuclear power plants. The reviews and evaluations previously utilized to process license amendments were adequate to assure continued public health and safety. As with many other previous NRC initiatives, these new regulations will require the use of our limited resources in areas which we perceive will not enhance nuclear safety. The additional resources being expended to fulfill these new regulations are therefore being applied at the expense of other voluntary activities which could otherwise be accomplished. However, we fully recognize that these rules are being implemented to fulfill congressional mandates, and that under these circumstances the NRC has considerably less latitude regarding the final scope and specific provisions of these rules than would otherwise be the case. Given that Congress has required their implementation, we offer the following comments and observations in the interest of minimizing their negative impact.

dupe

The trend within NRC for the past several years has been to dramatically increase the scope and volume of Technical Specifications. Over the course of time, the Technical Specifications have become cluttered with a considerable amount of superfluous detail not truly appropriate or necessary to satisfy the intent of 10CFR50.36. One of the by-products of this trend is that more license amendments are being processed than nuclear safety considerations warrant.

The Commission apparently recognizes this problem and has published a proposed rule (47FR13369) which is stated to be directed at addressing this concern. Our general endorsement of this concept and other pertinent observations were provided in previous correspondence(1). The subject interim final rules further serve to heighten the importance of taking steps to alleviate this situation in the near term. However, we are concerned that the Commission may not have fully recognized the synergistic effects which would occur if both these proposals are implemented in their current form. There are also a number of other issues where the implications of these interim final rules either lack clarity or have the potential to yield additional adverse synergistic effects. The balance of this letter is intended to identify and discuss these matters.

Interpretation of 10CFR Part 170

In a recent proposed rule (47FR52454), the NRC has proposed to amend the existing regulations governing payment of fees associated with, among other things, processing of license amendment requests. The key element of the proposed changes relates to assessment of fees based upon actual NRC resources expended rather than a fixed fee for various classes of amendments.

If the Part 170 changes are issued as proposed, after May 6, 1983 resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It is our view that licensees would not be the "identifiable recipient of benefits" resulting from this more involved process. As such, licensees should not be assessed fees for any expenses resulting from the public notice, State consultation, and other consequential or follow-up activities which may result. The legislative history behind Public Law 97-415 makes it clear that licensees are not the prime beneficiaries of this new license amendment process. Therefore, licensees should not be assessed additional fees to finance this activity.

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(1) Previous submittals addressing this matter include the following:

- o W. G. Counsil letter to the Secretary of the Commission dated September 8, 1980, Proposed Rulemaking Regarding Technical Specifications.
- o W. G. Counsil letter to the Secretary of the Commission dated May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.
- o W. G. Counsil letter to the Secretary of the Commission dated April 25, 1983, Proposed Rulemaking Regarding Technical Specifications.

Interpretation of the Term "Emergency"

The term "emergency" suggests the occurrence of a nuclear plant situation where public health and safety is in immediate jeopardy. The interim final rules use the term "emergency" to describe situations where failure to act in a timely fashion on a proposed license amendment would result in derating or shutdown of a plant. While in isolation this term may be appropriate, its use in this context may result in considerable confusion, especially in light of a recently issued final rule (48FR13966) regarding departures from license conditions or technical specifications in an "emergency" situation.

A member of the NRC Staff has called this potential conflict in terminology to our attention, and we agree that it is desirable to eliminate any potential confusion before it occurs, especially when the public may be asked to provide comments via a toll-free hotline or in response to newspaper articles describing a power plant "emergency". In this forum, the term "emergency" carries with it a connotation not accurate when describing license amendments which warrant expedited treatment. Frequently the situations which arise have very little nuclear safety significance but the wording of the technical specifications is such that a plant shutdown would be necessary within a matter of hours or days unless an amendment is issued promptly.

Use of the term "emergency" in the context of the final rule (48FR13966) is more appropriate from our perspective. The stated purpose of that rule is to allow licensees to take reasonable action that departs from a license condition or technical specification when such action is immediately needed to protect the public health and safety. While we are hopeful that such situations would rarely if ever arise, the situations contemplated are authentic emergencies which have some safety significance. The rule correctly recognizes that not all plant conditions can be anticipated in the license and technical specifications, and provisions have been taken to allow departures.

In light of the above, we propose that the term "emergency" be reserved exclusively for use in the context of 48FR13966, and that alternate wording be developed for use in the interim final rule. For instance, the initial portions of 10CFR50.91(a)(5) could be reworded as follows:

> "Where the Commission finds that plant conditions exist warranting expedited treatment of a proposed license amendment, in that failure ....."

Other provisions of the interim final rules which currently use the word "emergency" could similarly be reworded. We believe this recommendation will eliminate both an unnecessary source of concern for the public and potential confusion with the provisions of 10CFR50.54(x) and 50.72(c).

Use of Media to Obtain Public Comment

In the Supplementary Information section of the interim final rule on Notice and State Consultation, the NRC describes various means of obtaining public comment under exigent circumstances. Two options specifically mentioned

include use of a local newspaper to inform residents of proposed amendments, and use of a toll-free hotline to facilitate receipt of public comment.

We are hard pressed to envision circumstances under which these measures will truly enhance nuclear safety. It is far more likely that such actions will serve to unnecessarily alarm the public. Routine power plant evolutions, which in some cases result in the need for prompt processing of license amendments, are not appropriate subjects for newspaper articles and toll-free hotlines. They imply a sense of urgency and significance which, with respect to impact on the public health and safety, is simply not there. Our concerns regarding media exposure are not conjecture or speculation, but are based on our experience including a New York Times article on the Pressurized Thermal Shock issue for one of our plants, and on adverse and unjustified media exposure regarding the Interim Reliability Evaluation Program for another of our units. We refer you to our letters to H. R. Denton and Chairman Palladino(2) for additional details on these issues.

In response to our letter to Chairman Palladino, Mr. Dircks invited us(3) to provide additional suggestions on how to more effectively deal with the issue of media use of nuclear power plant data and information. In response to that invitation and to the concerns raised by the interim final rules, we offer two recommendations.

First, use of the media to provide information on nuclear power plant operations is a delicate matter which must be carefully administered. The perspectives of the public are markedly different from those directly associated with nuclear power regulation, and these differences must be recognized in preparing media releases. In the interest of optimizing this public comment process, we recommend that the NRC consult with the licensees on a proposed release before action is taken. Licensees would have a greater degree of familiarity with both the issue at hand and with local media personnel. The NRC would of course retain the final authority in the event of an impasse, but licensee input should be solicited. This measure would also improve the ability of licensees to respond to media inquiries by allowing more time for licensees to prepare information and to ensure the availability of knowledgable personnel.

Second, we recommend that all inputs provided by the States and the public to the NRC be made available to licensees. Copies of all correspondence should be

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(2) The referenced documents are:

- o W. G. Counsil letter to H. R. Denton dated, October 23, 1981, Pressurized Thermal Shock of Reactor Vessels.
- o W. G. Counsil letter to N. J. Palladino dated February 16, 1983, Interim Reliability Evaluation Program.

(3) W. J. Dircks letter to W. G. Counsil dated April 11, 1983, Interim Reliability Evaluation Program.

forwarded promptly to licensees. If a hotline is established, all conversations should be taped and copies be provided to licensees. Such measures are appropriate because it is the licensees who are responsible for public health and safety, and any potentially relevant input should promptly be made available to licensees. Further, licensees invest substantial resources in public information programs and these inputs could be used to assess their effectiveness and identify potential areas of improvement. We remain dedicated to the safety of nuclear power plant operations, and we are willing to provide information to the States or the public to demonstrate our corporate commitment. We are in a better position to respond to the public's questions and comments, and should be provided all inputs provided to NRC under these circumstances.

Implications of NRC's Regionalization Plans

In 48FR12619, the NRC noticed a summary of its plans regarding regionalization of selected licensing functions. The issue which has attracted the most attention during the regional meetings and in other forums is the regionalization of certain power reactor licensing functions, with a resulting division of licensing responsibilities between NRC headquarters and the Regional Offices. We believe that such a step may prove beneficial, provided a reasonable concensus is reached regarding which functions are regionalized and which are retained at headquarters. We fully recognize that final decisions have not been reached and therefore NRC's current regionalization plans have no immediate impact on the interim final rules. However, we wish to ensure a smooth transition and believe some advance planning will facilitate the process. This matter was addressed briefly in previous correspondence(4); further clarification is provided here.

Most of the discussions we have participated in suggest that the delineation of responsibilities will be issue-oriented. Implicit in this approach is the fact that review and issuance of license amendments would also be shared. The "routine" amendments would be processed by the Regions and the "complex" amendments would be dispositioned by headquarters. Certain internal NRC memoranda(5) appear to support this type of approach. If this situation materializes without further guidance, licensees would be unsure where to direct license amendments requiring expedited treatment since by definition the plant situation would not have been previously contemplated. Given the extensive amounts of telephone contact normally associated with these situations, we believe it is desirable that communications with the responsible NRC Office be initiated from the beginning. Hence, we recommend that before any transfer of authority of facility licenses occurs, a clear understanding of the groundrules for the transfer is reached. We are confident that a mutually acceptable approach can be defined in the context of finalizing the details of the entire regionalization process.

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(4) W. G. Counsil letter to D. G. Eisenhut dated, March 24, 1983, Comments on Draft NUREG-0737 PWR Technical Specifications.

(5) J. G. Keppler memorandum to H. R. Denton dated, January 13, 1982, Regionalization of NRR Functions.
H. R. Denton memorandum to V. Stello dated February 5, 1982, Regionalization of Regulatory Functions.

Further, independent of where licensee amendments are evaluated, it is necessary that thorough and precise procedures be in place to provide a road map for the NRC Staff on the steps to be taken to promptly process a license amendment request(6). Before the NRC can establish the optimum method of regionalizing this function, it now must address the new elements of Federal Register notice coordination, public comment review, State consultation, and coping with exigent circumstances. We merely wish to avoid a situation where the Regional Offices have the responsibility of dealing with a proposal requiring prompt attention, and working level personnel are unfamiliar with any of the steps necessary to process the request. In summary, we believe that the interim final rules introduce new considerations into the evaluation of regionalizing authority to issue license amendments. These and other factors should be considered by both the NRC and the industry before a decision is reached.

No Significant Hazards Consideration - Reracking of Spent Fuel Pools

We strongly support the Commission's decision to not include reracking in the list of examples that will be considered likely to involve a significant hazard consideration.(7) It is clearly inappropriate to publish a policy which ignores and runs contrary to the documented technical NRC conclusions published in numerous Safety Evaluation Reports. A decision to classify all rerackings as actions constituting significant hazards considerations, applied to certain realistic scenarios, would yield some rather bizarre conclusions. For example, a licensee operating several facilities may have previously reracked a spent fuel pool and have therefore received a Staff SER containing the typical findings such as:

- The new racks do not alter the potential consequences of the design basis accident for the spent fuel pool, and
- The new racks will not change the radiological consequences of a postulated fuel handling accident or spent fuel caskdrop.

The same licensee may now wish to expand its spent fuel storage capacity at a sister unit using an identical design, and the Commission would find a "significant hazard" associated with a previously explicitly approved and successfully implemented design if this example was reinstated. In short, nuclear safety decisions should be reached using technical input. Significantly, adopting our recommendation would send an appropriate and interpretable signal regarding the meaning of the criteria associated with making the no significant hazards consideration determination on issues not explicitly covered in the examples.

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(6) Specific recommendations in this regard were provided in the W. G. Counsil letter to D. G. Eisenhut dated April 25, 1983, Public Law 97-415.

(7) The basis for our support was summarized in the W. G. Counsil letter to Chairman Palladino dated, February 9, 1983, Significant Hazards Considerations.

Amendments Requiring Expedited Treatment and Involving a Significant Hazards Consideration

The Commission's interim final rules identify the procedural differences between amendments involving a significant hazards consideration from those which do not. Where conditions warrant and the amendment does not involve a significant hazards consideration, there is a process available to have amendments issued on an expedited basis. However, there is no process identified to disposition amendment requests which both require expedited treatment and involve a significant hazards consideration. While we recognize that it is unlikely for such a situation to arise, it is nonetheless conceivable. The scenario takes on additional credibility when one hypothesizes a situation where ample lead time was provided, a hearing was convened, and protracted administrative delays consumed all the time originally allocated to secure regulatory approval. In these or other circumstances delaying issuance of an amendment could even run contrary to the interests of overall plant safety.

While various organizations may have differing views in the probability of such a scenario, prudence dictates that some mechanism be established to deal with this situation. One possibility would be Commission issuance of an immediately effective Order (10CFR2.204). We would welcome the opportunity to discuss this matter further with the NRC.

Treatment of Exemptions from NRC Regulations

The subject interim final rules contain no explicit reference to exemptions(8) from NRC regulations which are issued. However, we are concerned that the various methods the Commission has used to issue exemptions may result in unjustifiably complicating their disposition by subjecting all such future requests to this new OL amendment process. It is our view that exemption requests need not automatically be considered license amendments, even though the NRC has occasionally elected to notice such actions in the Federal Register and/or assign license amendment numbers to the issuing documents. Support for our position can be found from both the technical and legal perspectives.

From a technical standpoint, many exemptions which licensees are obligated to seek are the direct result of poorly worded or inappropriate regulations. Far fewer exemptions would be needed if the NRC was more sensitive to industry perspectives in its rulemaking proceedings. The most blatant example of this trend are NRC's fire protection regulations, 10CFR50.48 and Appendix R to 10CFR50. The regulated industry has already submitted hundreds of exemption requests from these regulations, and the unfortunate truth is that thousands may be dispositioned before the issue is resolved. The word exemption carries with it a connotation to the layman of a reduction in the protection of public health and

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(8) Requests for relief from NRC regulations generally filed pursuant to 10CFR50.12, or other provisions of limited applicability such as 10CFR50.48(c)(6).

safety. Of course, this is not the case. In fact, the criteria for submitting under 50.48(c)(6) are that implementation of NRC requirements would not enhance fire protection safety or may be detrimental to overall facility safety. Such issues should not, as a matter of standard practice, be elevated to the status of license amendments.

From a legal standpoint, ample precedent has been set in that there have been numerous instances in the past of the NRC issuing exemptions and not assigning license amendment numbers to the issuing documents(9). The precedent has already been firmly established and the interim final rules do not disturb this practice. Adoption of this recommendation would yield no conflict with any existing NRC regulation.

Support from our position can also be found in 10CFR170.22, schedule of fees for facility license amendments. This paragraph describes the current six classes of amendments, and identifies the required fee for review. The description for Classes III through VI contain the following:

"Amendments, exemptions, or required approvals ....."

The above wording indicates that amendments and exemptions are distinct actions, and that exemptions should not automatically be considered license amendments. In addition, the NRC has issued at least one clarification letter(10) on Part 170 in which further support for this position can be found.

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(9) Examples of this approach include the following:

D. M. Crutchfield letter to W. G. Counsil dated, April 21, 1983. Exemption related to the Annual Emergency Preparedness Exercise, Millstone Station, Units No. 1 and 2.

D. M. Crutchfield letter to W. G. Counsil dated, December 21, 1982. Inservice Inspection Relief, Reactor Coolant Pump Inspection Program, Haddam Neck Plant.

H. R. Denton letter to W. G. Counsil dated, November 11, 1981. Fire Protection Exemption, Haddam Neck Plant and Millstone Station, Unit No. 2.

(10) A July 12, 1979 letter from W. O. Miller to W. G. Counsil provided guidance for interpreting the requirements of Part 170. Enclosure No. 7 of that document makes it explicitly clear that review of proposed amendments are separate and distinct from reviews of exemption requests, even when only one safety issue is involved.

To consider all exemptions as amendments would merely add more administrative hurdles, paperwork, and time delays to an already sufficiently cumbersome process. More importantly, it would add nothing to nuclear safety. In several recent instances the NRC has either acted or proposed to act in a fashion suggesting that the need for exemptions will continue to escalate. On the issue of prompt notification systems, the NRC established a deadline knowing with virtual certainty that several licensees would be incapable of complying. In the proposed rule on shift staffing (47FR38135), the NRC described how licensees could merely seek exemptions if they could not meet the proposed deadline. Appendix E to 10CFR50 requires annual emergency planning exercises, even though the lead governmental agency on this issue, FEMA, believes a lesser frequency is adequate. Often the annual frequency cannot be met because FEMA, the States, the local communities, other involved agencies cannot support that schedule.(11) Even when the licensee is not responsible for the deferral, the licensee is obligated to seek and justify the exemption. We believe that no additional obstacles should be erected in the exemption process, and we urge the NRC to let nuclear safety considerations play a paramount role in reaching a decision in this regard.

Relationship to Proposed Rule on Technical Specifications for Nuclear Power Reactors

In 47FR13369, the NRC proposed to amend existing regulations governing Technical Specifications by introducing a bi-level system of Technical Specifications and Supplemental Specifications. Only the former would be made directly a part of the operating license, and any changes would continue to require prior NRC approval. According to the explanation provided in the Federal Register notice, the Supplemental Specifications can be changed by the licensee within certain bounds and under prescribed conditions. A process similar to plant changes made under 50.59 is envisioned.

The major difficulty we forsee when looking at this process in the context of the interim final rules concerns proposed 10CFR50.36(f)(7). Even though the Supplemental Specifications would not be a part of the license, there are conditions (described in 50.36(f)(7)) under which proposed changes must be treated as license amendments and applications must be filed pursuant to 50.90. It is unclear why applications for license amendments must be submitted to change a document which is to be designated not a part of the operating license. There are also implications in proposed 50.54(x)(12) of instances where changes to the Supplemental Specifications may involve license amendments in that "prior Commission approval" is required.

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(11) Additional examples of this trend can be found in the W. G. Counsil letter to the Secretary of the Commission dated, February 2, 1983, Comments on the Proposed Rule Regarding Revision of License Fee Schedules.

(12) Apparently to be re-designated in light of the change issued in 48FR13966, which promulgates a different provision designated as 50.54(x).

While the above questions need to be resolved independent of the interim final rules, they acquire additional significance in light of the new license amendment process. The attractiveness of this proposed rule is diminished if a significant percentage of changes to the provisions which would be included within the Supplemental Specifications have to be processed as amendments, especially in light of these interim final rules. Among the comments we submitted previously(13) on this proposed rule, we suggested that the constraints within which changes could be implemented by the licensee are unnecessarily restrictive. Specific recommendations regarding relaxation of the proposed criteria were also provided.

Question of Retroactivity

The interim final rules become effective on May 6, 1983. In recent conversations with the Staff, we have been verbally informed that the NRC intends to process all amendment requests not issued by May 6, 1983 by following the steps contained in the interim final rules. We find such a position to be totally inappropriate and, in fact, contrary to the rule itself. We believe that all amendment requests docketed by May 6, 1983 should be dispositioned using the conventional (pre-interim final rules) process.

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> "Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and not provide notice for public comment on amendments on which the Commission has not acted before the effective date of the interim final rule."

The above explanation is unambiguous and, when coupled with the previously quoted excerpt from the new 50.91, leaves no doubt that pending amendment requests should be processed using the original procedures. No explanation for any other approach has been offered, and we strongly believe that the statements in the rule should be adhered to.

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(13) W. G. Counsil letter to the Secretary of the Commission dated, May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.

actual criteria (vs. their interpretation) for making the former determination, the interim final rule has raised an important question regarding the interpretation of the criteria in 50.59.

The most important difference between the two sets of criteria relates to the absence of the word "significant" in either 50.59(a)(2)(i) or 50.59 (a)(2)(iii). When interpreted literally, the absence of the word significant results in an extremely rigid set of criteria which unjustifiably complicates the process of implementing changes to facility design or procedures.

To illustrate this point, the following examples are presented. The legal limit on site boundary dose for a certain accident may be 300 rem. The licensing basis analysis for this event may have a dose consequence of 0.001 rem, many orders of magnitude below the regulatory limit. A design change may result in a doubling of the calculated dose, which constitutes an "increase in the consequences of a previously analyzed accident". This situation could result in a positive unreviewed safety question determination, when in fact this safety significance of the change is trivial. One example of such a change concerns the transition from manual to automatic initiation of auxiliary feedwater systems for PWR's.

Similarly, the probability of a given accident resulting in a core melt may be 10^{-7}, several orders of magnitude below the proposed safety goal. A plant design change may increase this probability by a factor of 2, yet not have any significant impact on the overall probability of core melt for the facility. It is our view that this situation should not result in a positive unreviewed safety question determination, yet a literal interpretation of the currently phrased 50.59 has this effect.

The criteria of 50.59 can be interpreted a number of ways, and our review has revealed that little if any relevant guidance from the NRC exists in this regard. Consequently, we believe that the most appropriate action is to formally amend the first and third criteria as follows:

- If the probability of occurence where the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be <u>significantly</u> increased,

- If the margin of safety as defined in the basis for any technical specification is <u>significantly</u> reduced.

We believe these changes would streamline the process by eliminating ambiguity and reducing the number of positive unreviewed safety question determinations and consequently reducing the volume of paperwork required, yet nuclear safety considerations would not be compromised. These changes would clearly place the responsibility for nuclear safety where it belongs, in the hands of licensees.

We intend to discuss this recommendation with members of the Staff and, if appropriate, file a petition for rulemaking to accomplish this objective.

Looking at the license amendment situation from a more global perspective, it has become eminently clear that far too many license amendments are being processed using increasing complex procedures. Several independent alternatives, or a combination of them, should be pursued to alleviate this situation. One alternative identified above is to relax the criteria governing what constitutes an unreviewed safety question. A second approach is conceptually identified in the proposed rulemaking on Technical Specifications, involving the creation of a bi-level system of specifications. A third alternative would be to establish a system whereby many of the provisions currently contained in the Technical Specifications could be amended by the licensee without explicit prior NRC approval. The common theme behind each of these alternatives is a reduction in the paper pushed to implement plant changes and license amendments with an equivalent or improved assurance of nuclear safety. The objective is to clearly articulate that licensees have the responsibility for plant safety, and the NRC functions in an audit-only role whenever possible. We suggest that these possibilities be explored further to bring the optimum solution to fruition.

Interpretation of Criteria Used to Make the No Signification Hazards Consideration Determination

The pivotal word in three criteria used to make the no significant hazards consideration determination is the word "significant". Obviously this word can connote different meanings to different people. We believe that licensees are best qualified to interpret this term in the context of their own amendment requests, and consequently the Commission should avoid publishing rigid "guidance" documents in this regard. We are currently preparing a guidance document for our use internally, and its purpose will be to ensure company-wide consistency without prescribing a cookbook approach.

For example, it is inappropriate to specify a percentage change above which the change becomes "significant" in all circumstances. When the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant. When the safety margin is fifteen percent, a comparable percentage reduction may in fact be significant. The cummulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

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Very truly yours,

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May 10, 1983

Docket Nos. 50-213
50-245
50-336
50-423
B10784

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
1717 H Street
Washington, D. C. 20555

Gentlemen:

Haddam Neck Plant
Millstone Nuclear Power Station, Unit Nos. 1, 2, & 3
Comments on Interim Final Rules
Notice and State Consultation
Standards for Determining Whether License
Amendments Involve No Significant Hazards Considerations

In 48FR14864 and 48FR14873, the Commission promulgated interim final rules on the above captioned subjects, in accordance with the provisions of Public Law 97-415. Connecticut Yankee Atomic Power Company (CYAPCO) and Northeast Nuclear Energy Company (NNECO) hereby provide the following comments on these interim final rules.

General Comments

Our general perspective is that these regulations will not significantly, if at all, improve the safety of nuclear power plants. The reviews and evaluations previously utilized to process license amendments were adequate to assure continued public health and safety. As with many other previous NRC initiatives, these new regulations will require the use of our limited resources in areas which we perceive will not enhance nuclear safety. The additional resources being expended to fulfill these new regulations are therefore being applied at the expense of other voluntary activities which could otherwise be accomplished. However, we fully recognize that these rules are being implemented to fulfill congressional mandates, and that under these circumstances the NRC has considerably less latitude regarding the final scope and specific provisions of these rules than would otherwise be the case. Given that Congress has required their implementation, we offer the following comments and observations in the interest of minimizing their negative impact.

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The trend within NRC for the past several years has been to dramatically increase the scope and volume of Technical Specifications. Over the course of time, the Technical Specifications have become cluttered with a considerable amount of superfluous detail not truly appropriate or necessary to satisfy the intent of 10CFR50.36. One of the by-products of this trend is that more license amendments are being processed than nuclear safety considerations warrant.

The Commission apparently recognizes this problem and has published a proposed rule (47FR13369) which is stated to be directed at addressing this concern. Our general endorsement of this concept and other pertinent observations were provided in previous correspondence(1). The subject interim final rules further serve to heighten the importance of taking steps to alleviate this situation in the near term. However, we are concerned that the Commission may not have fully recognized the synergistic effects which would occur if both these proposals are implemented in their current form. There are also a number of other issues where the implications of these interim final rules either lack clarity or have the potential to yield additional adverse synergistic effects. The balance of this letter is intended to identify and discuss these matters.

Interpretation of 10CFR Part 170

In a recent proposed rule (47FR52454), the NRC has proposed to amend the existing regulations governing payment of fees associated with, among other things, processing of license amendment requests. The key element of the proposed changes relates to assessment of fees based upon actual NRC resources expended rather than a fixed fee for various classes of amendments.

If the Part 170 changes are issued as proposed, after May 6, 1983 resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It is our view that licensees would not be the "identifiable recipient of benefits" resulting from this more involved process. As such, licensees should not be assessed fees for any expenses resulting from the public notice, State consultation, and other consequential or follow-up activities which may result. The legislative history behind Public Law 97-415 makes it clear that licensees are not the prime beneficiaries of this new license amendment process. Therefore, licensees should not be assessed additional fees to finance this activity.

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(1) Previous submittals addressing this matter include the following:

- o W. G. Counsil letter to the Secretary of the Commission dated September 8, 1980, Proposed Rulemaking Regarding Technical Specifications.
- o W. G. Counsil letter to the Secretary of the Commission dated May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.
- o W. G. Counsil letter to the Secretary of the Commission dated April 25, 1983, Proposed Rulemaking Regarding Technical Specifications.

Interpretation of the Term "Emergency"

The term "emergency" suggests the occurrence of a nuclear plant situation where public health and safety is in immediate jeopardy. The interim final rules use the term "emergency" to describe situations where failure to act in a timely fashion on a proposed license amendment would result in derating or shutdown of a plant. While in isolation this term may be appropriate, its use in this context may result in considerable confusion, especially in light of a recently issued final rule (48FR13966) regarding departures from license conditions or technical specifications in an "emergency" situation.

A member of the NRC Staff has called this potential conflict in terminology to our attention, and we agree that it is desirable to eliminate any potential confusion before it occurs, especially when the public may be asked to provide comments via a toll-free hotline or in response to newspaper articles describing a power plant "emergency". In this forum, the term "emergency" carries with it a connotation not accurate when describing license amendments which warrant expedited treatment. Frequently the situations which arise have very little nuclear safety significance but the wording of the technical specifications is such that a plant shutdown would be necessary within a matter of hours or days unless an amendment is issued promptly.

Use of the term "emergency" in the context of the final rule (48FR13966) is more appropriate from our perspective. The stated purpose of that rule is to allow licensees to take reasonable action that departs from a license condition or technical specification when such action is immediately needed to protect the public health and safety. While we are hopeful that such situations would rarely if ever arise, the situations contemplated are authentic emergencies which have some safety significance. The rule correctly recognizes that not all plant conditions can be anticipated in the license and technical specifications, and provisions have been taken to allow departures.

In light of the above, we propose that the term "emergency" be reserved exclusively for use in the context of 48FR13966, and that alternate wording be developed for use in the interim final rule. For instance, the initial portions of 10CFR50.91(a)(5) could be reworded as follows:

> "Where the Commission finds that plant conditions exist warranting expedited treatment of a proposed license amendment, in that failure ....."

Other provisions of the interim final rules which currently use the word "emergency" could similarly be reworded. We believe this recommendation will eliminate both an unnecessary source of concern for the public and potential confusion with the provisions of 10CFR50.54(x) and 50.72(c).

Use of Media to Obtain Public Comment

In the Supplementary Information section of the interim final rule on Notice and State Consultation, the NRC describes various means of obtaining public comment under exigent circumstances. Two options specifically mentioned

include use of a local newspaper to inform residents of proposed amendments, and use of a toll-free hotline to facilitate receipt of public comment.

We are hard pressed to envision circumstances under which these measures will truly enhance nuclear safety. It is far more likely that such actions will serve to unnecessarily alarm the public. Routine power plant evolutions, which in some cases result in the need for prompt processing of license amendments, are not appropriate subjects for newspaper articles and toll-free hotlines. They imply a sense of urgency and significance which, with respect to impact on the public health and safety, is simply not there. Our concerns regarding media exposure are not conjecture or speculation, but are based on our experience including a New York Times article on the Pressurized Thermal Shock issue for one of our plants, and on adverse and unjustified media exposure regarding the Interim Reliability Evaluation Program for another of our units. We refer you to our letters to H. R. Denton and Chairman Palladino[2] for additional details on these issues.

In response to our letter to Chairman Palladino, Mr. Dircks invited us[3] to provide additional suggestions on how to more effectively deal with the issue of media use of nuclear power plant data and information. In response to that invitation and to the concerns raised by the interim final rules, we offer two recommendations.

First, use of the media to provide information on nuclear power plant operations is a delicate matter which must be carefully administered. The perspectives of the public are markedly different from those directly associated with nuclear power regulation, and these differences must be recognized in preparing media releases. In the interest of optimizing this public comment process, we recommend that the NRC consult with the licensees on a proposed release before action is taken. Licensees would have a greater degree of familiarity with both the issue at hand and with local media personnel. The NRC would of course retain the final authority in the event of an impasse, but licensee input should be solicited. This measure would also improve the ability of licensees to respond to media inquiries by allowing more time for licensees to prepare information and to ensure the availability of knowledgable personnel.

Second, we recommend that all inputs provided by the States and the public to the NRC be made available to licensees. Copies of all correspondence should be

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(2) The referenced documents are:

- W. G. Counsil letter to H. R. Denton dated, October 23, 1981, Pressurized Thermal Shock of Reactor Vessels.
- W. G. Counsil letter to N. J. Palladino dated February 16, 1983, Interim Reliability Evaluation Program.

(3) W. J. Dircks letter to W. G. Counsil dated April 11, 1983, Interim Reliability Evaluation Program.

forwarded promptly to licensees. If a hotline is established, all conversations should be taped and copies be provided to licensees. Such measures are appropriate because it is the licensees who are responsible for public health and safety, and any potentially relevant input should promptly be made available to licensees. Further, licensees invest substantial resources in public information programs and these inputs could be used to assess their effectiveness and identify potential areas of improvement. We remain dedicated to the safety of nuclear power plant operations, and we are willing to provide information to the States or the public to demonstrate our corporate commitment. We are in a better position to respond to the public's questions and comments, and should be provided all inputs provided to NRC under these circumstances.

Implications of NRC's Regionalization Plans

In 48FR12619, the NRC noticed a summary of its plans regarding regionalization of selected licensing functions. The issue which has attracted the most attention during the regional meetings and in other forums is the regionalization of certain power reactor licensing functions, with a resulting division of licensing responsibilities between NRC headquarters and the Regional Offices. We believe that such a step may prove beneficial, provided a reasonable concensus is reached regarding which functions are regionalized and which are retained at headquarters. We fully recognize that final decisions have not been reached and therefore NRC's current regionalization plans have no immediate impact on the interim final rules. However, we wish to ensure a smooth transition and believe some advance planning will facilitate the process. This matter was addressed briefly in previous correspondence(4); further clarification is provided here.

Most of the discussions we have participated in suggest that the delineation of responsibilities will be issue-oriented. Implicit in this approach is the fact that review and issuance of license amendments would also be shared. The "routine" amendments would be processed by the Regions and the "complex" amendments would be dispositioned by headquarters. Certain internal NRC memoranda(5) appear to support this type of approach. If this situation materializes without further guidance, licensees would be unsure where to direct license amendments requiring expedited treatment since by definition the plant situation would not have been previously contemplated. Given the extensive amounts of telephone contact normally associated with these situations, we believe it is desirable that communications with the responsible NRC Office be initiated from the beginning. Hence, we recommend that before any transfer of authority of facility licenses occurs, a clear understanding of the groundrules for the transfer is reached. We are confident that a mutually acceptable approach can be defined in the context of finalizing the details of the entire regionalization process.

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(4) W. G. Counsil letter to D. G. Eisenhut dated, March 24, 1983, Comments on Draft NUREG-0737 PWR Technical Specifications.

(5) J. G. Keppler memorandum to H. R. Denton dated, January 13, 1982, Regionalization of NRR Functions.
H. R. Denton memorandum to V. Stello dated February 5, 1982, Regionalization of Regulatory Functions.

Further, independent of where licensee amendments are evaluated, it is necessary that thorough and precise procedures be in place to provide a road map for the NRC Staff on the steps to be taken to promptly process a license amendment request[6]. Before the NRC can establish the optimum method of regionalizing this function, it now must address the new elements of Federal Register notice coordination, public comment review, State consultation, and coping with exigent circumstances. We merely wish to avoid a situation where the Regional Offices have the responsibility of dealing with a proposal requiring prompt attention, and working level personnel are unfamiliar with any of the steps necessary to process the request. In summary, we believe that the interim final rules introduce new considerations into the evaluation of regionalizing authority to issue license amendments. These and other factors should be considered by both the NRC and the industry before a decision is reached.

No Significant Hazards Consideration - Reracking of Spent Fuel Pools

We strongly support the Commission's decision to not include reracking in the list of examples that will be considered likely to involve a significant hazard consideration.[7] It is clearly inappropriate to publish a policy which ignores and runs contrary to the documented technical NRC conclusions published in numerous Safety Evaluation Reports. A decision to classify all rerackings as actions constituting significant hazards considerations, applied to certain realistic scenarios, would yield some rather bizarre conclusions. For example, a licensee operating several facilities may have previously reracked a spent fuel pool and have therefore received a Staff SER containing the typical findings such as:

- The new racks do not alter the potential consequences of the design basis accident for the spent fuel pool, and
- The new racks will not change the radiological consequences of a postulated fuel handling accident or spent fuel caskdrop.

The same licensee may now wish to expand its spent fuel storage capacity at a sister unit using an identical design, and the Commission would find a "significant hazard" associated with a previously explicitly approved and successfully implemented design if this example was reinstated. In short, nuclear safety decisions should be reached using technical input. Significantly, adopting our recommendation would send an appropriate and interpretable signal regarding the meaning of the criteria associated with making the no significant hazards consideration determination on issues not explicitly covered in the examples.

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(6) Specific recommendations in this regard were provided in the W. G. Counsil letter to D. G. Eisenhut dated April 25, 1983, Public Law 97-415.

(7) The basis for our support was summarized in the W. G. Counsil letter to Chairman Palladino dated, February 9, 1983, Significant Hazards Considerations.

Amendments Requiring Expedited Treatment and Involving a Significant Hazards Consideration

The Commission's interim final rules identify the procedural differences between amendments involving a significant hazards consideration from those which do not. Where conditions warrant and the amendment does not involve a significant hazards consideration, there is a process available to have amendments issued on an expedited basis. However, there is no process identified to disposition amendment requests which both require expedited treatment and involve a significant hazards consideration. While we recognize that it is unlikely for such a situation to arise, it is nonetheless conceivable. The scenario takes on additional credibility when one hypothesizes a situation where ample lead time was provided, a hearing was convened, and protracted administrative delays consumed all the time originally allocated to secure regulatory approval. In these or other circumstances delaying issuance of an amendment could even run contrary to the interests of overall plant safety.

While various organizations may have differing views in the probability of such a scenario, prudence dictates that some mechanism be established to deal with this situation. One possibility would be Commission issuance of an immediately effective Order (10CFR2.204). We would welcome the opportunity to discuss this matter further with the NRC.

Treatment of Exemptions from NRC Regulations

The subject interim final rules contain no explicit reference to exemptions(8) from NRC regulations which are issued. However, we are concerned that the various methods the Commission has used to issue exemptions may result in unjustifiably complicating their disposition by subjecting all such future requests to this new OL amendment process. It is our view that exemption requests need not automatically be considered license amendments, even though the NRC has occasionally elected to notice such actions in the Federal Register and/or assign license amendment numbers to the issuing documents. Support for our position can be found from both the technical and legal perspectives.

From a technical standpoint, many exemptions which licensees are obligated to seek are the direct result of poorly worded or inappropriate regulations. Far fewer exemptions would be needed if the NRC was more sensitive to industry perspectives in its rulemaking proceedings. The most blatant example of this trend are NRC's fire protection regulations, 10CFR50.48 and Appendix R to 10CFR50. The regulated industry has already submitted hundreds of exemption requests from these regulations, and the unfortunate truth is that thousands may be dispositioned before the issue is resolved. The word exemption carries with it a connotation to the layman of a reduction in the protection of public health and

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(8) Requests for relief from NRC regulations generally filed pursuant to 10CFR50.12, or other provisions of limited applicability such as 10CFR50.48(c)(6).

safety. Of course, this is not the case. In fact, the criteria for submitting under 50.48(c)(6) are that implementation of NRC requirements would not enhance fire protection safety or may be detrimental to overall facility safety. Such issues should not, as a matter of standard practice, be elevated to the status of license amendments.

From a legal standpoint, ample precedent has been set in that there have been numerous instances in the past of the NRC issuing exemptions and not assigning license amendment numbers to the issuing documents(9). The precedent has already been firmly established and the interim final rules do not disturb this practice. Adoption of this recommendation would yield no conflict with any existing NRC regulation.

Support from our position can also be found in 10CFR170.22, schedule of fees for facility license amendments. This paragraph describes the current six classes of amendments, and identifies the required fee for review. The description for Classes III through VI contain the following:

"Amendments, exemptions, or required approvals ....."

The above wording indicates that amendments and exemptions are distinct actions, and that exemptions should not automatically be considered license amendments. In addition, the NRC has issued at least one clarification letter(10) on Part 170 in which further support for this position can be found.

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(9) Examples of this approach include the following:

D. M. Crutchfield letter to W. G. Counsil dated, April 21, 1983. Exemption related to the Annual Emergency Preparedness Exercise, Millstone Station, Units No. 1 and 2.

D. M. Crutchfield letter to W. G. Counsil dated, December 21, 1982. Inservice Inspection Relief, Reactor Coolant Pump Inspection Program, Haddam Neck Plant.

H. R. Denton letter to W. G. Counsil dated, November 11, 1981. Fire Protection Exemption, Haddam Neck Plant and Millstone Station, Unit No. 2.

(10) A July 12, 1979 letter from W. O. Miller to W. G. Counsil provided guidance for interpreting the requirements of Part 170. Enclosure No. 7 of that document makes it explicitly clear that review of proposed amendments are separate and distinct from reviews of exemption requests, even when only one safety issue is involved.

To consider all exemptions as amendments would merely add more administrative hurdles, paperwork, and time delays to an already sufficiently cumbersome process. More importantly, it would add nothing to nuclear safety. In several recent instances the NRC has either acted or proposed to act in a fashion suggesting that the need for exemptions will continue to escalate. On the issue of prompt notification systems, the NRC established a deadline knowing with virtual certainty that several licensees would be incapable of complying. In the proposed rule on shift staffing (47FR38135), the NRC described how licensees could merely seek exemptions if they could not meet the proposed deadline. Appendix E to 10CFR50 requires annual emergency planning exercises, even though the lead governmental agency on this issue, FEMA, believes a lesser frequency is adequate. Often the annual frequency cannot be met because FEMA, the States, the local communities, other involved agencies cannot support that schedule.(11) Even when the licensee is not responsible for the deferral, the licensee is obligated to seek and justify the exemption. We believe that no additional obstacles should be erected in the exemption process, and we urge the NRC to let nuclear safety considerations play a paramount role in reaching a decision in this regard.

Relationship to Proposed Rule on Technical Specifications for Nuclear Power Reactors

In 47FR13369, the NRC proposed to amend existing regulations governing Technical Specifications by introducing a bi-level system of Technical Specifications and Supplemental Specifications. Only the former would be made directly a part of the operating license, and any changes would continue to require prior NRC approval. According to the explanation provided in the Federal Register notice, the Supplemental Specifications can be changed by the licensee within certain bounds and under prescribed conditions. A process similar to plant changes made under 50.59 is envisioned.

The major difficulty we forsee when looking at this process in the context of the interim final rules concerns proposed 10CFR50.36(f)(7). Even though the Supplemental Specifications would not be a part of the license, there are conditions (described in 50.36(f)(7)) under which proposed changes must be treated as license amendments and applications must be filed pursuant to 50.90. It is unclear why applications for license amendments must be submitted to change a document which is to be designated not a part of the operating license. There are also implications in proposed 50.54(x)(12) of instances where changes to the Supplemental Specifications may involve license amendments in that "prior Commission approval" is required.

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(11) Additional examples of this trend can be found in the W. G. Counsil letter to the Secretary of the Commission dated, February 2, 1983, Comments on the Proposed Rule Regarding Revision of License Fee Schedules.

(12) Apparently to be re-designated in light of the change issued in 48FR13966, which promulgates a different provision designated as 50.54(x).

While the above questions need to be resolved independent of the interim final rules, they acquire additional significance in light of the new license amendment process. The attractiveness of this proposed rule is diminished if a significant percentage of changes to the provisions which would be included within the Supplemental Specifications have to be processed as amendments, especially in light of these interim final rules. Among the comments we submitted previously(13) on this proposed rule, we suggested that the constraints within which changes could be implemented by the licensee are unnecessarily restrictive. Specific recommendations regarding relaxation of the proposed criteria were also provided.

Question of Retroactivity

The interim final rules become effective on May 6, 1983. In recent conversations with the Staff, we have been verbally informed that the NRC intends to process all amendment requests not issued by May 6, 1983 by following the steps contained in the interim final rules. We find such a position to be totally inappropriate and, in fact, contrary to the rule itself. We believe that all amendment requests docketed by May 6, 1983 should be dispositioned using the conventional (pre-interim final rule) process.

The new 10CFR50.91 contains the following paragraph:

> "The Commission will use the following procedures on an application received after May 6, 1983 requesting an amendment to an operating license ....."

The Supplementary Information Section further clarifies the statement in the rule as follows:

> "Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and not provide notice for public comment on amendments on which the Commission has not acted before the effective date of the interim final rule."

The above explanation is unambiguous and, when coupled with the previously quoted excerpt from the new 50.91, leaves no doubt that pending amendment requests should be processed using the original procedures. No explanation for any other approach has been offered, and we strongly believe that the statements in the rule should be adhered to.

Criteria Used to Make the No Significant Hazards Consideration Determination

The NRC is undoubtedly aware of the strong similarity between the criteria to be used to make the no significant hazards consideration determination with the criteria of 50.59 which define the tests associated with making the unreviewed safety question determination. While we offer no explicit comments on the

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(13) W. G. Counsil letter to the Secretary of the Commission dated, May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.

actual criteria (vs. their interpretation) for making the former determination, the interim final rule has raised an important question regarding the interpretation of the criteria in 50.59.

The most important difference between the two sets of criteria relates to the absence of the word "significant" in either 50.59(a)(2)(i) or 50.59 (a)(2)(iii). When interpreted literally, the absence of the word significant results in an extremely rigid set of criteria which unjustifiably complicates the process of implementing changes to facility design or procedures.

To illustrate this point, the following examples are presented. The legal limit on site boundary dose for a certain accident may be 300 rem. The licensing basis analysis for this event may have a dose consequence of 0.001 rem, many orders of magnitude below the regulatory limit. A design change may result in a doubling of the calculated dose, which constitutes an "increase in the consequences of a previously analyzed accident". This situation could result in a positive unreviewed safety question determination, when in fact this safety significance of the change is trivial. One example of such a change concerns the transition from manual to automatic initiation of auxiliary feedwater systems for PWR's.

Similarly, the probability of a given accident resulting in a core melt may be 10^{-7}, several orders of magnitude below the proposed safety goal. A plant design change may increase this probability by a factor of 2, yet not have any significant impact on the overall probability of core melt for the facility. It is our view that this situation should not result in a positive unreviewed safety question determination, yet a literal interpretation of the currently phrased 50.59 has this effect.

The criteria of 50.59 can be interpreted a number of ways, and our review has revealed that little if any relevant guidance from the NRC exists in this regard. Consequently, we believe that the most appropriate action is to formally amend the first and third criteria as follows:

- If the probability of occurence where the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be significantly increased,

- If the margin of safety as defined in the basis for any technical specification is significantly reduced.

We believe these changes would streamline the process by eliminating ambiguity and reducing the number of positive unreviewed safety question determinations and consequently reducing the volume of paperwork required, yet nuclear safety considerations would not be compromised. These changes would clearly place the responsibility for nuclear safety where it belongs, in the hands of licensees.

We intend to discuss this recommendation with members of the Staff and, if appropriate, file a petition for rulemaking to accomplish this objective.

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Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
1717 H Street
Washington, D. C. 20555

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The Commission apparently recognizes this problem and has published a proposed rule (47FR13369) which is stated to be directed at addressing this concern. Our general endorsement of this concept and other pertinent observations were provided in previous correspondence(1). The subject interim final rules further serve to heighten the importance of taking steps to alleviate this situation in the near term. However, we are concerned that the Commission may not have fully recognized the synergistic effects which would occur if both these proposals are implemented in their current form. There are also a number of other issues where the implications of these interim final rules either lack clarity or have the potential to yield additional adverse synergistic effects. The balance of this letter is intended to identify and discuss these matters.

Interpretation of 10CFR Part 170

In a recent proposed rule (47FR52454), the NRC has proposed to amend the existing regulations governing payment of fees associated with, among other things, processing of license amendment requests. The key element of the proposed changes relates to assessment of fees based upon actual NRC resources expended rather than a fixed fee for various classes of amendments.

If the Part 170 changes are issued as proposed, after May 6, 1983 resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It is our view that licensees would not be the "identifiable recipient of benefits" resulting from this more involved process. As such, licensees should not be assessed fees for any expenses resulting from the public notice, State consultation, and other consequential or follow-up activities which may result. The legislative history behind Public Law 97-415 makes it clear that licensees are not the prime beneficiaries of this new license amendment process. Therefore, licensees should not be assessed additional fees to finance this activity.

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(1) Previous submittals addressing this matter include the following:

- o W. G. Counsil letter to the Secretary of the Commission dated September 8, 1980, Proposed Rulemaking Regarding Technical Specifications.
- o W. G. Counsil letter to the Secretary of the Commission dated May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.
- o W. G. Counsil letter to the Secretary of the Commission dated April 25, 1983, Proposed Rulemaking Regarding Technical Specifications.

Interpretation of the Term "Emergency"

The term "emergency" suggests the occurrence of a nuclear plant situation where public health and safety is in immediate jeopardy. The interim final rules use the term "emergency" to describe situations where failure to act in a timely fashion on a proposed license amendment would result in derating or shutdown of a plant. While in isolation this term may be appropriate, its use in this context may result in considerable confusion, especially in light of a recently issued final rule (48FR13966) regarding departures from license conditions or technical specifications in an "emergency" situation.

A member of the NRC Staff has called this potential conflict in terminology to our attention, and we agree that it is desirable to eliminate any potential confusion before it occurs, especially when the public may be asked to provide comments via a toll-free hotline or in response to newspaper articles describing a power plant "emergency". In this forum, the term "emergency" carries with it a connotation not accurate when describing license amendments which warrant expedited treatment. Frequently the situations which arise have very little nuclear safety significance but the wording of the technical specifications is such that a plant shutdown would be necessary within a matter of hours or days unless an amendment is issued promptly.

Use of the term "emergency" in the context of the final rule (48FR13966) is more appropriate from our perspective. The stated purpose of that rule is to allow licensees to take reasonable action that departs from a license condition or technical specification when such action is immediately needed to protect the public health and safety. While we are hopeful that such situations would rarely if ever arise, the situations contemplated are authentic emergencies which have some safety significance. The rule correctly recognizes that not all plant conditions can be anticipated in the license and technical specifications, and provisions have been taken to allow departures.

In light of the above, we propose that the term "emergency" be reserved exclusively for use in the context of 48FR13966, and that alternate wording be developed for use in the interim final rule. For instance, the initial portions of 10CFR50.91(a)(5) could be reworded as follows:

> "Where the Commission finds that plant conditions exist warranting expedited treatment of a proposed license amendment, in that failure ....."

Other provisions of the interim final rules which currently use the word "emergency" could similarly be reworded. We believe this recommendation will eliminate both an unnecessary source of concern for the public and potential confusion with the provisions of 10CFR50.54(x) and 50.72(c).

Use of Media to Obtain Public Comment

In the Supplementary Information section of the interim final rule on Notice and State Consultation, the NRC describes various means of obtaining public comment under exigent circumstances. Two options specifically mentioned

include use of a local newspaper to inform residents of proposed amendments, and use of a toll-free hotline to facilitate receipt of public comment.

We are hard pressed to envision circumstances under which these measures will truly enhance nuclear safety. It is far more likely that such actions will serve to unnecessarily alarm the public. Routine power plant evolutions, which in some cases result in the need for prompt processing of license amendments, are not appropriate subjects for newspaper articles and toll-free hotlines. They imply a sense of urgency and significance which, with respect to impact on the public health and safety, is simply not there. Our concerns regarding media exposure are not conjecture or speculation, but are based on our experience including a New York Times article on the Pressurized Thermal Shock issue for one of our plants, and on adverse and unjustified media exposure regarding the Interim Reliability Evaluation Program for another of our units. We refer you to our letters to H. R. Denton and Chairman Palladino(2) for additional details on these issues.

In response to our letter to Chairman Palladino, Mr. Dircks invited us(3) to provide additional suggestions on how to more effectively deal with the issue of media use of nuclear power plant data and information. In response to that invitation and to the concerns raised by the interim final rules, we offer two recommendations.

First, use of the media to provide information on nuclear power plant operations is a delicate matter which must be carefully administered. The perspectives of the public are markedly different from those directly associated with nuclear power regulation, and these differences must be recognized in preparing media releases. In the interest of optimizing this public comment process, we recommend that the NRC consult with the licensees on a proposed release before action is taken. Licensees would have a greater degree of familiarity with both the issue at hand and with local media personnel. The NRC would of course retain the final authority in the event of an impasse, but licensee input should be solicited. This measure would also improve the ability of licensees to respond to media inquiries by allowing more time for licensees to prepare information and to ensure the availability of knowledgable personnel.

Second, we recommend that all inputs provided by the States and the public to the NRC be made available to licensees. Copies of all correspondence should be

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(2) The referenced documents are:

- o W. G. Counsil letter to H. R. Denton dated, October 23, 1981, Pressurized Thermal Shock of Reactor Vessels.
- o W. G. Counsil letter to N. J. Palladino dated February 16, 1983, Interim Reliability Evaluation Program.

(3) W. J. Dircks letter to W. G. Counsil dated April 11, 1983, Interim Reliability Evaluation Program.

forwarded promptly to licensees. If a hotline is established, all conversations should be taped and copies be provided to licensees. Such measures are appropriate because it is the licensees who are responsible for public health and safety, and any potentially relevant input should promptly be made available to licensees. Further, licensees invest substantial resources in public information programs and these inputs could be used to assess their effectiveness and identify potential areas of improvement. We remain dedicated to the safety of nuclear power plant operations, and we are willing to provide information to the States or the public to demonstrate our corporate commitment. We are in a better position to respond to the public's questions and comments, and should be provided all inputs provided to NRC under these circumstances.

Implications of NRC's Regionalization Plans

In 48FR12619, the NRC noticed a summary of its plans regarding regionalization of selected licensing functions. The issue which has attracted the most attention during the regional meetings and in other forums is the regionalization of certain power reactor licensing functions, with a resulting division of licensing responsibilities between NRC headquarters and the Regional Offices. We believe that such a step may prove beneficial, provided a reasonable concensus is reached regarding which functions are regionalized and which are retained at headquarters. We fully recognize that final decisions have not been reached and therefore NRC's current regionalization plans have no immediate impact on the interim final rules. However, we wish to ensure a smooth transition and believe some advance planning will facilitate the process. This matter was addressed briefly in previous correspondence(4); further clarification is provided here.

Most of the discussions we have participated in suggest that the delineation of responsibilities will be issue-oriented. Implicit in this approach is the fact that review and issuance of license amendments would also be shared. The "routine" amendments would be processed by the Regions and the "complex" amendments would be dispositioned by headquarters. Certain internal NRC memoranda(5) appear to support this type of approach. If this situation materializes without further guidance, licensees would be unsure where to direct license amendments requiring expedited treatment since by definition the plant situation would not have been previously contemplated. Given the extensive amounts of telephone contact normally associated with these situations, we believe it is desirable that communications with the responsible NRC Office be initiated from the beginning. Hence, we recommend that before any transfer of authority of facility licenses occurs, a clear understanding of the groundrules for the transfer is reached. We are confident that a mutually acceptable approach can be defined in the context of finalizing the details of the entire regionalization process.

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(4) W. G. Counsil letter to D. G. Eisenhut dated, March 24, 1983, Comments on Draft NUREG-0737 PWR Technical Specifications.

(5) J. G. Keppler memorandum to H. R. Denton dated, January 13, 1982, Regionalization of NRR Functions.
H. R. Denton memorandum to V. Stello dated February 5, 1982, Regionalization of Regulatory Functions.

Further, independent of where licensee amendments are evaluated, it is necessary that thorough and precise procedures be in place to provide a road map for the NRC Staff on the steps to be taken to promptly process a license amendment request(6). Before the NRC can establish the optimum method of regionalizing this function, it now must address the new elements of Federal Register notice coordination, public comment review, State consultation, and coping with exigent circumstances. We merely wish to avoid a situation where the Regional Offices have the responsibility of dealing with a proposal requiring prompt attention, and working level personnel are unfamiliar with any of the steps necessary to process the request. In summary, we believe that the interim final rules introduce new considerations into the evaluation of regionalizing authority to issue license amendments. These and other factors should be considered by both the NRC and the industry before a decision is reached.

No Significant Hazards Consideration - Reracking of Spent Fuel Pools

We strongly support the Commission's decision to not include reracking in the list of examples that will be considered likely to involve a significant hazard consideration.(7) It is clearly inappropriate to publish a policy which ignores and runs contrary to the documented technical NRC conclusions published in numerous Safety Evaluation Reports. A decision to classify all rerackings as actions constituting significant hazards considerations, applied to certain realistic scenarios, would yield some rather bizarre conclusions. For example, a licensee operating several facilities may have previously reracked a spent fuel pool and have therefore received a Staff SER containing the typical findings such as:

- The new racks do not alter the potential consequences of the design basis accident for the spent fuel pool, and
- The new racks will not change the radiological consequences of a postulated fuel handling accident or spent fuel caskdrop.

The same licensee may now wish to expand its spent fuel storage capacity at a sister unit using an identical design, and the Commission would find a "significant hazard" associated with a previously explicitly approved and successfully implemented design if this example was reinstated. In short, nuclear safety decisions should be reached using technical input. Significantly, adopting our recommendation would send an appropriate and interpretable signal regarding the meaning of the criteria associated with making the no significant hazards consideration determination on issues not explicitly covered in the examples.

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(6) Specific recommendations in this regard were provided in the W. G. Counsil letter to D. G. Eisenhut dated April 25, 1983, Public Law 97-415.

(7) The basis for our support was summarized in the W. G. Counsil letter to Chairman Palladino dated, February 9, 1983, Significant Hazards Considerations.

Amendments Requiring Expedited Treatment and Involving a Significant Hazards Consideration

The Commission's interim final rules identify the procedural differences between amendments involving a significant hazards consideration from those which do not. Where conditions warrant and the amendment does not involve a significant hazards consideration, there is a process available to have amendments issued on an expedited basis. However, there is no process identified to disposition amendment requests which both require expedited treatment and involve a significant hazards consideration. While we recognize that it is unlikely for such a situation to arise, it is nonetheless conceivable. The scenario takes on additional credibility when one hypothesizes a situation where ample lead time was provided, a hearing was convened, and protracted administrative delays consumed all the time originally allocated to secure regulatory approval. In these or other circumstances delaying issuance of an amendment could even run contrary to the interests of overall plant safety.

While various organizations may have differing views in the probability of such a scenario, prudence dictates that some mechanism be established to deal with this situation. One possibility would be Commission issuance of an immediately effective Order (10CFR2.204). We would welcome the opportunity to discuss this matter further with the NRC.

Treatment of Exemptions from NRC Regulations

The subject interim final rules contain no explicit reference to exemptions(8) from NRC regulations which are issued. However, we are concerned that the various methods the Commission has used to issue exemptions may result in unjustifiably complicating their disposition by subjecting all such future requests to this new OL amendment process. It is our view that exemption requests need not automatically be considered license amendments, even though the NRC has occasionally elected to notice such actions in the Federal Register and/or assign license amendment numbers to the issuing documents. Support for our position can be found from both the technical and legal perspectives.

From a technical standpoint, many exemptions which licensees are obligated to seek are the direct result of poorly worded or inappropriate regulations. Far fewer exemptions would be needed if the NRC was more sensitive to industry perspectives in its rulemaking proceedings. The most blatant example of this trend are NRC's fire protection regulations, 10CFR50.48 and Appendix R to 10CFR50. The regulated industry has already submitted hundreds of exemption requests from these regulations, and the unfortunate truth is that thousands may be dispositioned before the issue is resolved. The word exemption carries with it a connotation to the layman of a reduction in the protection of public health and

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(8) Requests for relief from NRC regulations generally filed pursuant to 10CFR50.12, or other provisions of limited applicability such as 10CFR50.48(c)(6).

safety. Of course, this is not the case. In fact, the criteria for submitting under 50.48(c)(6) are that implementation of NRC requirements would not enhance fire protection safety or may be detrimental to overall facility safety. Such issues should not, as a matter of standard practice, be elevated to the status of license amendments.

From a legal standpoint, ample precedent has been set in that there have been numerous instances in the past of the NRC issuing exemptions and not assigning license amendment numbers to the issuing documents(9). The precedent has already been firmly established and the interim final rules do not disturb this practice. Adoption of this recommendation would yield no conflict with any existing NRC regulation.

Support from our position can also be found in 10CFR170.22, schedule of fees for facility license amendments. This paragraph describes the current six classes of amendments, and identifies the required fee for review. The description for Classes III through VI contain the following:

"Amendments, exemptions, or required approvals ....."

The above wording indicates that amendments and exemptions are distinct actions, and that exemptions should not automatically be considered license amendments. In addition, the NRC has issued at least one clarification letter(10) on Part 170 in which further support for this position can be found.

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(9) Examples of this approach include the following:

D. M. Crutchfield letter to W. G. Counsil dated, April 21, 1983. Exemption related to the Annual Emergency Preparedness Exercise, Millstone Station, Units No. 1 and 2.

D. M. Crutchfield letter to W. G. Counsil dated, December 21, 1982. Inservice Inspection Relief, Reactor Coolant Pump Inspection Program, Haddam Neck Plant.

H. R. Denton letter to W. G. Counsil dated, November 11, 1981. Fire Protection Exemption, Haddam Neck Plant and Millstone Station, Unit No. 2.

(10) A July 12, 1979 letter from W. O. Miller to W. G. Counsil provided guidance for interpreting the requirements of Part 170. Enclosure No. 7 of that document makes it explicitly clear that review of proposed amendments are separate and distinct from reviews of exemption requests, even when only one safety issue is involved.

To consider all exemptions as amendments would merely add more administrative hurdles, paperwork, and time delays to an already sufficiently cumbersome process. More importantly, it would add nothing to nuclear safety. In several recent instances the NRC has either acted or proposed to act in a fashion suggesting that the need for exemptions will continue to escalate. On the issue of prompt notification systems, the NRC established a deadline knowing with virtual certainty that several licensees would be incapable of complying. In the proposed rule on shift staffing (47FR38135), the NRC described how licensees could merely seek exemptions if they could not meet the proposed deadline. Appendix E to 10CFR50 requires annual emergency planning exercises, even though the lead governmental agency on this issue, FEMA, believes a lesser frequency is adequate. Often the annual frequency cannot be met because FEMA, the States, the local communities, other involved agencies cannot support that schedule.(11) Even when the licensee is not responsible for the deferral, the licensee is obligated to seek and justify the exemption. We believe that no additional obstacles should be erected in the exemption process, and we urge the NRC to let nuclear safety considerations play a paramount role in reaching a decision in this regard.

Relationship to Proposed Rule on Technical Specifications for Nuclear Power Reactors

In 47FR13369, the NRC proposed to amend existing regulations governir Technical Specifications by introducing a bi-level system of Technical Specifications and Supplemental Specifications. Only the former would be made directly a part of the operating license, and any changes would continue to require prior NRC approval. According to the explanation provided in the Federal Register notice, the Supplemental Specifications can be changed by the licensee within certain bounds and under prescribed conditions. A process similar to plant changes made under 50.59 is envisioned.

The major difficulty we forsee when looking at this process in the context of the interim final rules concerns proposed 10CFR50.36(f)(7). Even though the Supplemental Specifications would not be a part of the license, there are conditions (described in 50.36(f)(7)) under which proposed changes must be treated as license amendments and applications must be filed pursuant to 50.90. It is unclear why applications for license amendments must be submitted to change a document which is to be designated not a part of the operating license. There are also implications in proposed 50.54(x)(12) of instances where changes to the Supplemental Specifications may involve license amendments in that "prior Commission approval" is required.

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(11) Additional examples of this trend can be found in the W. G. Counsil letter to the Secretary of the Commission dated, February 2, 1983, Comments on the Proposed Rule Regarding Revision of License Fee Schedules.

(12) Apparently to be re-designated in light of the change issued in 48FR13966, which promulgates a different provision designated as 50.54(x).

While the above questions need to be resolved independent of the interim final rules, they acquire additional significance in light of the new license amendment process. The attractiveness of this proposed rule is diminished if a significant percentage of changes to the provisions which would be included within the Supplemental Specifications have to be processed as amendments, especially in light of these interim final rules. Among the comments we submitted previously(13) on this proposed rule, we suggested that the constraints within which changes could be implemented by the licensee are unnecessarily restrictive. Specific recommendations regarding relaxation of the proposed criteria were also provided.

Question of Retroactivity

The interim final rules become effective on May 6, 1983. In recent conversations with the Staff, we have been verbally informed that the NRC intends to process all amendment requests not issued by May 6, 1983 by following the steps contained in the interim final rules. We find such a position to be totally inappropriate and, in fact, contrary to the rule itself. We believe that all amendment requests docketed by May 6, 1983 should be dispositioned using the conventional (pre-interim final rule) process.

The new 10CFR50.91 contains the following paragraph:

> "The Commission will use the following procedures on an application received after May 6, 1983 requesting an amendment to an operating license ....."

The Supplementary Information Section further clarifies the statement in the rule as follows:

> "Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and not provide notice for public comment on amendments on which the Commission has not acted before the effective date of the interim final rule."

The above explanation is unambiguous and, when coupled with the previously quoted excerpt from the new 50.91, leaves no doubt that pending amendment requests should be processed using the original procedures. No explanation for any other approach has been offered, and we strongly believe that the statements in the rule should be adhered to.

Criteria Used to Make the No Significant Hazards Consideration Determination

The NRC is undoubtedly aware of the strong similarity between the criteria to be used to make the no significant hazards consideration determination with the criteria of 50.59 which define the tests associated with making the unreviewed safety question determination. While we offer no explicit comments on the

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(13) W. G. Counsil letter to the Secretary of the Commission dated, May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.

actual criteria (vs. their interpretation) for making the former determination, the interim final rule has raised an important question regarding the interpretation of the criteria in 50.59.

The most important difference between the two sets of criteria relates to the absence of the word "significant" in either 50.59(a)(2)(i) or 50.59 (a)(2)(iii). When interpreted literally, the absence of the word significant results in an extremely rigid set of criteria which unjustifiably complicates the process of implementing changes to facility design or procedures.

To illustrate this point, the following examples are presented. The legal limit on site boundary dose for a certain accident may be 300 rem. The licensing basis analysis for this event may have a dose consequence of 0.001 rem, many orders of magnitude below the regulatory limit. A design change may result in a doubling of the calculated dose, which constitutes an "increase in the consequences of a previously analyzed accident". This situation could result in a positive unreviewed safety question determination, when in fact this safety significance of the change is trivial. One example of such a change concerns the transition from manual to automatic initiation of auxiliary feedwater systems for PWR's.

Similarly, the probability of a given accident resulting in a core melt may be 10^{-7}, several orders of magnitude below the proposed safety goal. A plant design change may increase this probability by a factor of 2, yet not have any significant impact on the overall probability of core melt for the facility. It is our view that this situation should not result in a positive unreviewed safety question determination, yet a literal interpretation of the currently phrased 50.59 has this effect.

The criteria of 50.59 can be interpreted a number of ways, and our review has revealed that little if any relevant guidance from the NRC exists in this regard. Consequently, we believe that the most appropriate action is to formally amend the first and third criteria as follows:

- If the probability of occurence where the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be significantly increased,

- If the margin of safety as defined in the basis for any technical specification is significantly reduced.

We believe these changes would streamline the process by eliminating ambiguity and reducing the number of positive unreviewed safety question determinations and consequently reducing the volume of paperwork required, yet nuclear safety considerations would not be compromised. These changes would clearly place the responsibility for nuclear safety where it belongs, in the hands of licensees.

We intend to discuss this recommendation with members of the Staff and, if appropriate, file a petition for rulemaking to accomplish this objective.

Looking at the license amendment situation from a more global perspective, it has become eminently clear that far too many license amendments are being processed using increasing complex procedures. Several independent alternatives, or a combination of them, should be pursued to alleviate this situation. One alternative identified above is to relax the criteria governing what constitutes an unreviewed safety question. A second approach is conceptually identified in the proposed rulemaking on Technical Specifications, involving the creation of a bi-level system of specifications. A third alternative would be to establish a system whereby many of the provisions currently contained in the Technical Specifications could be amended by the licensee without explicit prior NRC approval. The common theme behind each of these alternatives is a reduction in the paper pushed to implement plant changes and license amendments with an equivalent or improved assurance of nuclear safety. The objective is to clearly articulate that licensees have the responsibility for plant safety, and the NRC functions in an audit-only role whenever possible. We suggest that these possibilities be explored further to bring the optimum solution to fruition.

Interpretation of Criteria Used to Make the No Signification Hazards Consideration Determination

The pivotal word in three criteria used to make the no significant hazards consideration determination is the word "significant". Obviously this word can connote different meanings to different people. We believe that licensees are best qualified to interpret this term in the context of their own amendment requests, and consequently the Commission should avoid publishing rigid "guidance" documents in this regard. We are currently preparing a guidance document for our use internally, and its purpose will be to ensure company-wide consistency without prescribing a cookbook approach.

For example, it is inappropriate to specify a percentage change above which the change becomes "significant" in all circumstances. When the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant. When the safety margin is fifteen percent, a comparable percentage reduction may in fact be significant. The cummulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

In addition, our guidance document will provide information regarding the "design basis envelope" for our facilities. Our accident probability or consequence determinations will be limited to our design basis requirements and other credible scenarios and not to all hypotheses of third-party reviewers.

Conclusion

We appreciate the opportunity to provide our comments on these interim final rules, and are available to provide further clarification if desired by the Staff.

Very truly yours,

W. G. Counsil

W. G. Counsil
Senior Vice President

-50 (18)
(48FR 14864)

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May 16, 1983

Mr. Samuel J. Chilk
Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chilk:

Enclosed for the Commission's consideration are the comments of Carolina Power & Light Company (CP&L) on the interim final rules implementing Section 12 of the NRC Authorization Act published at 48 Fed. Reg. 14864 and 14873 on April 6, 1983.

CP&L requested and received an extension of time until Monday, May 16, 1983 within which to file these comments from Mr. Scott Stuckey, Chief, Docketing and Service Branch. CP&L very much appreciates the granting of the extension and the opportunity to submit the enclosed comments.

Sincerely,

Samantha Francis Flynn
Associate General Counsel

SFF/dlt

cc: Thomas F. Dorian, Esquire
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Carolina Power & Light Company

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May 16, 1983

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Comments on Interim Final Rules: Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations; 48 Fed. Reg. 14864; Notice and State Consultation; 48 Fed. Reg. 14873 (April 6, 1983).

Dear Mr. Chilk:

Carolina Power & Light Company (CP&L) appreciates this opportunity to comment on the interim final rules implementing Section 12 of the NRC Authorization Act, Pub. L. No. 97-415, 96 Stat. 2067, published at 48 Fed. Reg. 14864 and 14873 on April 6, 1983.

By letter to Mr. Chilk from the law firm of Debevoise & Liberman dated May 6, 1983, CP&L and several other utilities have submitted fairly extensive comments on these interim regulations. CP&L, acting individually, is submitting these additional comments in order to emphasize certain points it deems to be of particular importance.

I. Notice Procedures

In the Statement of Considerations accompanying the proposed interim regulations regarding notice procedures, the Commission stated that with respect to operating license amendment requests filed prior to May 6, 1983 (the interim rules' effective date) but not yet acted upon by that date, "the Commission proposes to keep its present procedures and not provide notice for public comment." In addition, the first paragraph of proposed §50.91 provides: "the Commission will use the following [new] procedures on an application received after May 6, 1983 requesting an amendment to an operating license."

Many utilities learned informally, only shortly before the effective date of the rules, that the Commission had changed its position and was, in fact, intending to provide notice and opportunity for public comment on such applications.

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This reversal of position obviously places at a serious disadvantage a utility which requires one or more license amendments applied for prior to May 6, 1983 before it may start up from a refueling outage during the months of May and June, 1983. Of course, the amendments typically required for start up after a refueling outage are routine in nature and do not involve significant hazards consideration.

Under these circumstances, and because of the enormous cost to a utility and its customers that every day of down time entails, CP&L believes that such cases should be treated as necessarily involving exigent circumstances which warrant the use of expedited procedures for providing notice and opportunity for comment of the Commission's initial determination of no significant hazards consideration and intent to issue the amendment. That such a situation constitutes exigent circumstances becomes apparent when one balances the substantial costs for replacement power which would be borne by a utility and its customers against the slight inconvenience that potential intervenors might experience because of a need to provide comments within a shorter than usual period of time. The costs of delaying startup in such a situation are particularly unacceptable when one recognizes the routine nature of most amendments of this kind and the unlikelihood, therefore, that a determination of no significant hazards consideration with respect to such amendments would engender or merit significant criticism.

With respect to a related issue, CP&L believes that a thirty day period for receiving public comment on a Commission initial determination of no significant hazards consideration, even in normal circumstances, would create substantial delays in the amendment process without any corresponding increase in the protection of the public health and safety. For these reasons, CP&L requests the Commission to adopt the shorter notice and comment periods suggested in the utility group's comments filed on May 6, 1983.

Whatever time period the Commission ultimately adopts for opportunity for comment in normal circumstances, CP&L believes that it is necessary to recognize that exigent circumstances may arise subsequent to the publication of a Commission notice offering the normal period of time for public comment on an initial determination of no significant hazards consideration. The interim regulations should be modified to make clear that the Commission may, in such circumstances, establish an expedited schedule for receiving public comment and issuing the amendment.

II. Standards Concerning Determination of no Significant Hazards Consideration.

In the Statement of Consideration accompanying the interim regulations regarding standards governing determinations of no significant hazards considerations, the Commission provided several examples of Amendment requests not likely to be deemed to involve significant hazards considerations.

As currently written, example (viii) provides that an amendment to reflect minor adjustments in ownership shares of co-owners already shown on the license as owners would not be likely to involve significant hazards considerations. CP&L believes that, similarly, there are not likely to be significant hazards considerations when an amendment is sought to add new co-owners to an operating license so long as the electric utility designated in the existing license as the operator of the reactor will retain exclusive responsibility for its operation and control.

CP&L requests, therefore, that example (viii) be amended to include such a situation.

Thank you for your consideration of these comments.

Respectfully submitted,

Walter J. Hurford

Walter J. Hurford
Manager - Technical Services

WJH/dlt

PR-50 (18)
(48FR 14864)

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Samantha Francis Flynn
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CP&L
Carolina Power & Light Company

May 16, 1983

Mr. Samuel J. Chilk
Secretary
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Washington, D.C. 20555

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Dear Mr. Chilk:

Carolina Power & Light Company (CP&L) appreciates this opportunity to comment on the interim final rules implementing Section 12 of the NRC Authorization Act, Pub. L. No. 97-415, 96 Stat. 2067, published at 48 Fed. Reg. 14864 and 14873 on April 6, 1983.

By letter to Mr. Chilk from the law firm of Debevoise & Liberman dated May 6, 1983, CP&L and several other utilities have submitted fairly extensive comments on these interim regulations. CP&L, acting individually, is submitting these additional comments in order to emphasize certain points it deems to be of particular importance.

I. Notice Procedures

In the Statement of Considerations accompanying the proposed interim regulations regarding notice procedures, the Commission stated that with respect to operating license amendment requests filed prior to May 6, 1983 (the interim rules' effective date) but not yet acted upon by that date, "the Commission proposes to keep its present procedures and not provide notice for public comment." In addition, the first paragraph of proposed §50.91 provides: "the Commission will use the following [new] procedures on an application received after May 6, 1983 requesting an amendment to an operating license."

Many utilities learned informally, only shortly before the effective date of the rules, that the Commission had changed its position and was, in fact, intending to provide notice and opportunity for public comment on such applications.

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This reversal of position obviously places at a serious disadvantage a utility which requires one or more license amendments applied for prior to May 6, 1983 before it may start up from a refueling outage during the months of May and June, 1983. Of course, the amendments typically required for start up after a refueling outage are routine in nature and do not involve significant hazards consideration.

Under these circumstances, and because of the enormous cost to a utility and its customers that every day of down time entails, CP&L believes that such cases should be treated as necessarily involving exigent circumstances which warrant the use of expedited procedures for providing notice and opportunity for comment of the Commission's initial determination of no significant hazards consideration and intent to issue the amendment. That such a situation constitutes exigent circumstances becomes apparent when one balances the substantial costs for replacement power which would be borne by a utility and its customers against the slight inconvenience that potential intervenors might experience because of a need to provide comments within a shorter than usual period of time. The costs of delaying startup in such a situation are particularly unacceptable when one recognizes the routine nature of most amendments of this kind and the unlikelihood, therefore, that a determination of no significant hazards consideration with respect to such amendments would engender or merit significant criticism.

With respect to a related issue, CP&L believes that a thirty day period for receiving public comment on a Commission initial determination of no significant hazards consideration, even in normal circumstances, would create substantial delays in the amendment process without any corresponding increase in the protection of the public health and safety. For these reasons, CP&L requests the Commission to adopt the shorter notice and comment periods suggested in the utility group's comments filed on May 6, 1983.

Whatever time period the Commission ultimately adopts for opportunity for comment in normal circumstances, CP&L believes that it is necessary to recognize that exigent circumstances may arise subsequent to the publication of a Commission notice offering the normal period of time for public comment on an initial determination of no significant hazards consideration. The interim regulations should be modified to make clear that the Commission may, in such circumstances, establish an expedited schedule for receiving public comment and issuing the amendment.

II. Standards Concerning Determination of no Significant Hazards Consideration.

In the Statement of Consideration accompanying the interim regulations regarding standards governing determinations of no significant hazards considerations, the Commission provided several examples of Amendment requests not likely to be deemed to involve significant hazards considerations.

As currently written, example (viii) provides that an amendment to reflect minor adjustments in ownership shares of co-owners already shown on the license as owners would not be likely to involve significant hazards considerations. CP&L believes that, similarly, there are not likely to be significant hazards considerations when an amendment is sought to add new co-owners to an operating license so long as the electric utility designated in the existing license as the operator of the reactor will retain exclusive responsibility for its operation and control.

CP&L requests, therefore, that example (viii) be amended to include such a situation.

Thank you for your consideration of these comments.

Respectfully submitted,

Walter J. Hurford

Walter J. Hurford
Manager - Technical Services

WJH/dlt

NEW YORK STATE ENERGY OFFICE

ROCKEFELLER PLAZA
ALBANY, NEW YORK 12223
WILLIAM D. COTTER, ACTING COMMISSIONER

PROPOSED RULE PR-50 (20)
(48 FR 14864)

May 16, 1983

Dear Mr. Secretary:

The Agencies of the State of New York have reviewed the proposed amendments to 10 CFR Parts 2 and 50 on significant hazards considerations and on State notice and consultation. We support the adoption of these proposals with consideration given to the comments presented below. The flexibility given to the NRC under these regulations should prevent unnecessary shutdowns or deratings of nuclear power plants while still protecting the public health and safety.

The new requirement for a nuclear power reactor licensee to formally and directly notify the State in which the reactor is located that the operator is requesting an amendment to their license at last recognizes the important and potential impacts on State resources of such large nuclear operations. The regulations give the State no more authority in regulating the operation of the reactor than it had in the past, but they serve notice on the reactor operator that the State is an interested party in all nuclear operations within the State.

We are concerned with the free use of the word "significant." There is no definition of what this means and its interpretation will be quite different by different groups. Even many of the examples used to demonstrate it use the same term and hence do not serve to clarify the intent. While it is very difficult to be precise in these matters, this lack may lead to court challenges in cases where opponents believe something is significant and NRC believes it's insignificant. We suggest that there should be some mechanism for resolving disputes between staff, the State, or other parties over whether there is or is not a significant hazard consideration.

We also believe the State and public should be able to have a say where a change has an environmental impact. While the regulation says that the "Commission will be particularly sensitive" to such impacts, it does not provide for any State or public input on them prior to issuance of the amendment.

2pp

DS 10 1/0
add:
Thomas F. Dorian
1604 NBB2

6/1/83 PD

Thank you for the opportunity to comment on these regulations.

Cordially,

William D. Cotter
Acting Commissioner

WDC/JDD/ds

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTN: Docketing and Service Branch

DOCKET NUMBER
PROPOSED RULE PR-50 (48FR 14864)

(22)
(27)

Portland General Electric Company

Bart D. Withers Vice President

June 15, 1983

Secretary of the Commission
Attention: Docketing and Service Branch
U. S. Nuclear Regulatory Commission
Washington DC 20555

Dear Sir:

Standards for Determining Whether License
Amendments Involve No Significant Hazards Consideration

On April 6, 1983, the NRC published an interim final rule in the Federal Register implementing standards for determining whether license amendments involve no significant hazards consideration. PGE has the following comments for your consideration:

1. The interim final rule went into effect too soon, not allowing for a sufficient comment period and not allowing time for experience under the new rule to see if its provisions are effective.

2. It is not clear if the emergency procedures apply for a plant which is shut down and cannot start up without a license amendment being issued. It is not perceived to be the intent of the rule to penalize such plants, and, therefore, the emergency provisions should apply in such cases.

3. The categories of derating or shutdown for an amendment to be considered as an emergency amendment are too narrow. Other equally justifiable circumstances that could improve public health and safety may warrant emergency action.

4. In general, the requirement to prenotice all license amendments is unduly restrictive and unnecessary. It was not the intent of the legislation to delay even routine license amendments 30 days.

Sincerely,

Bart D. Withers
Vice President
Nuclear

DS10
Add: Thomas
Dorian
9604 MNBB

c: Mr. Lynn Frank, Director
State of Oregon
Department of Energy

Acknowledged by card 6/21/83 PD

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PROPOSED RULE PR-50 (21)
(48FR 14864)

Portland General Electric Company

Bart D. Withers Vice President

June 15, 1983

Secretary of the Commission
Attention: Docketing and Service Branch
U. S. Nuclear Regulatory Commission
Washington DC 20555

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Sincerely,

Bart D. Withers
Vice President
Nuclear

c: Mr. Lynn Frank, Director
State of Oregon
Department of Energy

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Docketing & Services Branch

SUBJECT: Comments on proposed rule 10CFR50 re stds for determining whether license amends involve no significant hazards consideration.Opposes rule.Comment period insufficient.

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Add Thomas Dorian
9604 MNBB

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PROPOSED RULE PR-50 (21)
(48 FR 14864)

Portland General Electric Company

Bart D. Withers Vice President

June 15, 1983

Secretary of the Commission
Attention: Docketing and Service Branch
U. S. Nuclear Regulatory Commission
Washington DC 20555

Dear Sir:

Standards for Determining Whether License
Amendments Involve No Significant Hazards Consideration

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Sincerely,

B D Withers

Bart D. Withers
Vice President
Nuclear

dupe

c: Mr. Lynn Frank, Director
State of Oregon
Department of Energy

Acknowledged by card. 6/21/83 PD

AA61-2 PDR

Comments

1983

DOCKET NUMBER
PROPOSED RULE PR-50 (1)
(48 FR 14864)

May 2, 1983

Docketed USNRC
MAY 05 1983
Office of the Secretary
Docketing & Service Branch

Secretary of the Commission
ATTN: Docketing & Service
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

OCRE Comments on interim final rule: Standards for Determining Whether License Amendments Involve No Significant Hazards Consideration (48 FR 14864, April 6, 1983)

The Commission's implementation of the Sholly Amendment has some glaring deficiencies, as documented below by Ohio Citizens for Responsible Energy (OCRE). It is OCRE's opinion that the Commission has overstepped the bounds set by Congress in the amendment.

Congress told the NRC to develop guidelines which draw clear distinctions between amendments which pose significant hazards considerations and those which do not. Proposed 10 CFR 50.92(c) does not meet this requirement. The 3 criteria are much too vague and open to interpretation. In contrast, the examples given in the background information (48 FR 14870) do provide clear distinctions as mandated by Congress. However, these examples are not made part of the NRC's regulations, so they have no legal significance. 10 CFR 50.92(c) should contain this specific language and not the vague material now found there. The language now used is so open to interpretation (i.e., "significant" - to whom?) that it is likely, given the NRC's unfortunate history of siding with the industry it is supposed to regulate, that no hazard will be found significant.

This is demonstrated by the absence in the regulations of any assurance that reracking of spent fuel pools will be considered a significant hazards amendment, even when this has been the past practice of the NRC and was clearly the understanding of Congress that that practice would be continued.

OCRE fears that the NRC will be continuing its old custom of approving the license amendment before informing the public. Holding the hearing after the amendment has actually been approved is not only futile and a violation of due process but will also tarnish further the NRC's reputation in the eyes of the public. Ironically, the proposals at hand will increase, and not decrease, litigation; the courts will be kept busy determining whether the NRC has properly implemented the Congressional law in accordance with Sholly v. NRC.

Sincerely,

Susan L. Hiatt

Susan L. Hiatt
OCRE Representative
8275 Munson Rd.
Mentor, OH 44060

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5/13/83 PD

(2)

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DONALD J. SILVERMAN

May 2, 1983

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attn: Docketing and Service Branch

Re: Interim Final Rules on "Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations" and "Notice and State Consultation" (48 Fed. Reg. 14,864-80)

Dear Mr. Chilk:

On April 6, 1983, the Commission published "interim final rules" on the foregoing subjects and requested comments thereon by May 6, 1983. In response to such request, these comments are being submitted on behalf of Iowa Electric Light and Power Company and Florida Power & Light Company.

For the reasons set forth in more detail below, we suggest that the regulations and the Commission's intent be clarified as to the situations that could constitute an "emergency" or an "exigency," as to the transitional provisions applicable to requests for amendments received prior to May 6, 1983, and as to the use of post-notices under Section 2.106 in lieu of pre-notices under Section 2.105 in specified circumstances.

"Emergency Situations"

Under new 10 C.F.R. § 50.91(a)(5), the Commission may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for hearing "[w]here the Commission finds that an emergency situa-

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tion exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant . . . ."

Neither "shutdown" nor "derating" is defined in the regulation.*/ Although neither term is precise, in our view the logical intent must be for the regulation to include any interruption or reduction in the normally expected supply of electricity from a plant which has been in operation, under circumstances where such interruption or reduction would cause unnecessary economic injury or impact on a generating system. Thus, an "emergency" either could result from an interruption of operation or decrease in operating capacity or could exist because a plant, which has been shutdown or operated in a derated mode, is not permitted to return to operation or to increase its power output.

However, a narrower -- and we believe mistaken -- reading of the terms "shutdown" and "derating" might attempt to limit the regulation only to circumstances where a plant is actually in operation and suspension of operation or reduction of power generation would result unless the license amendment is timely issued. So interpreted, the provision would not apply to an amendment needed prior to return to power by a plant which has not been in operation (e.g., because of refueling, maintenance, interruption of transmission capacity, etc.). Nor would it apply to an amendment required prior to an increase in power output by a plant which, for any one of a number of similar reasons, is operating at a lower level of generation.

Because of this ambiguity, we strongly suggest that Section 50.91(a)(5) be amended to make it clear that an emergency situation can exist whenever it is necessary that a plant not in operation return to operation or for a derated plant to operate at a higher level of generation.

We believe that there is no impediment to this proposal in either Public Law 97-415 itself or its legislative history.

---

*/ The discussions of emergencies in the Statement of Considerations (48 Fed. Reg. 14,876, 14,877) does not assist in this interpretative effort.

On the contrary, our proposal corresponds with our view of the legislative intent.

It is clear that Section 12(a) of that legislation does not stand in the way of the proposal. The only relevant language is contained in the new Section 189a(2)(C) which directs the Commission to

> promulgate regulations establishing . . . (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved;

The provision does not define "emergency" or "emergency situations" but it does direct the Commission to "take into account the exigency of the need for the amendment involved." So far as economic need and system reliability are concerned, when power is needed the "exigency of the need" is essentially no different whether power is obtainable from a plant which can remain in operation or be operated at a high power level or from a plant which can be returned to operation.

We are aware that the language of Section 50.91a(5) is derived from similar language in the Conference Report:

> In the context of subsection (2)(C)(ii), the conferees understand; (sic) the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor. (The Commission already has the authority to respond to emergencies involving imminent threats to the public health or safety by issuing immediately effective orders pursuant to the Atomic Energy Act or the Administrative Procedure Act. And the licensee itself has authority to take whatever action is necessary to

respond to emergencies involving imminent threat to the public health and safety.)*/

However, the language of the first sentence quoted above has no more precision than does the regulation. On the other hand, the immediately following language contained in the parentheses makes it clear that the term "emergency situations" does not involve "imminent threats to the public health or safety" in the sense that those terms are used in the Atomic Energy Act. Rather the "emergency situations" must relate to other kinds of events and situations, including dislocation because of power outages or inability to return a plant to operation and of economic losses resulting from the unavailability of an economic means of generating power.

For the foregoing reasons, we recommend that Section 50.91(a)(5) be amended by inserting after the words "derating or shutdown of a nuclear power plant" the following words: ("including any prevention of either resumption of operation or increase in power output)".

"Exigent Circumstances"

At 48 Fed. Reg. 14,877 the Commission explains an "exigency" as a situation "where a licensee and the Commission must act quickly and where time does not permit the Commission to publish a Federal Register notice soliciting public comment or to provide 30 days ordinarily allowed for public comment." We agree with the breadth of that definition by the Commission. However, the two examples then given by the Commission appear to us unnecessarily narrow since both involve obvious improvements in safety and both involve potentially lost opportunities to implement such improvements during a plant outage. Although no amendment to the regulations is required, we suggest that the Commission make clear that these examples were not meant to be limiting in any respect, and that a determination of "exigency" can be considered whenever a proposed amendment involves no significant hazards consideration and the licensee can demonstrate that avoiding delay in issuance will provide a significant benefit (safety, environmental, reliability, economic, etc.).

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*/ H.R. Rep. No. 884, 97th Cong., 2nd Sess. 38 (1982).

Amendment Requests Received Before May 6, 1983

In its statement of considerations (48 Fed. Reg. 14,877), the Commission specified that, with respect to amendment requests received before May 6, 1983, the Commission intends to keep its present procedures and not provide prior notice of amendments that involve no significant hazards considerations. In our view, not only is this approach valid and appropriate under the statute, but it is essential in order to avoid both the potential logjam in NRC licensing activities that could result from the publication of an omnibus listing of pending amendment requests and the unnecessary delays that could result in the processing of any particular pending request. To assure that the foregoing Commission intent is carried out, however, we believe that the newly adopted Section 2.105(a)(4)(i) should be clarified. As promulgated, the section does not explicitly distinguish between requests received before May 6 and those received thereafter. In order to avoid reliance solely on the Commission's statement of its intent we suggest that the regulation be amended as follows:

In Section 2.105(a)(4)(i), delete the words "though it will provide notice of opportunity for a hearing pursuant to this section," and substitute the following: "though it will publish a notice of proposed action pursuant to this section (except in the case of an application for amendment received prior to May 6, 1983, where it will instead publish a notice of issuance pursuant to § 2.106),".

Several of the other contemporaneously adopted regulations also do not deal explicitly with amendment requests filed before May 6, 1983. Although corresponding clarifications could be considered, we do not believe that they are necessary. In order to avoid any misunderstanding as to the Commission's intent, however, we urge that the Commission explain clearly the overall effect of the new regulations on amendment requests still pending on May 6. For the convenience of the Commission, we enclose a proposed explanation which could be published in the statement of considerations dealing with the revision of the interim rule.

Issuance of Post-Notices Under Section 2.106

It is the obvious intent of the new Section 2.105(a)(4)(ii) that, under the circumstances there specified (a determination of an emergency or exigent situation and an amendment involving no significant hazards consideration), a notice of proposed action would not be published under Section 2.105 and, instead, a notice of issuance would be published under Section 2.106. However, to avoid the possible misunderstanding that the Section 2.106 notice is in addition to, and not a substitute for, a Section 2.105 notice, we suggest that the regulation be amended as follows:

In Section 2.105(a)(4)(ii), delete the words "it will provide notice of opportunity for a hearing pursuant to § 2.106" and substitute the following: "instead of publishing a notice of proposed action pursuant to this section it will publish a notice of issuance pursuant to § 2.106".

Although this amendment might be viewed as an overabundance of caution, we believe it to be desirable to avoid possible future controversy.

Very truly yours,

Lowenstein, Newman, Reis
& Axelrad

KHS:jcj
Attachment

ATTACHMENT

Proposed Statement Pertaining to Amendment Requests Received Before May 6, 1983

As was indicated in the statement of considerations (48 Fed. Reg. 14,877), with respect to amendment requests received before May 6, 1983, the Commission intends to keep its present procedures and not provide prior notice of amendments that involve no significant hazards considerations. Since the new Section 2.105(a)(4)(i) adopted in the interim final rule did not implement our intent with complete clarity, we are revising the final version to make it more explicit.*/ Thus, as to any such application for amendment still pending on May 6, the NRC, if the standards of Section 50.58 are satisfied, will issue the amendment and publish a notice of issuance pursuant to Section 2.106. If a hearing is requested before such notice is published, the amendment may nevertheless still be made immediately effective and the hearing granted thereafter.

No corresponding clarification of Section 2.105(a)(4)(ii) is required since, with respect to applications received before May 6, 1983, which involve no significant hazards consideration, the present procedures of the NRC (which remain applicable thereto) do not require a determination that an emergency or exigent situation exists in order to omit a notice of opportunity for a hearing prior to NRC action.

Similarly, although Sections 50.58(b) and 50.92 do not explicitly distinguish between applications received before May 6, 1983, and those received thereafter, no clarification of these sections is required since Section 2.105(a)(4)(i), as explained above, now makes the Commission's intent clear.

---

*/ We are also clarifying that the notice published under Section 2.105 is a notice of proposed action, which includes a notice of opportunity for a hearing.

PROPOSED RULE PR -50 (3)
(48 FR 14864)

BEFORE THE

NUCLEAR REGULATORY COMMISSION

In re:	)
Request for Public Comment	)
10 CFR Part 50	)
Standards for Determing	)
Whether License Amendments	)
Involve No Significant Hazards	)
Consideration	)

COMMENTS OF THE UNION
OF CONCERNED SCIENTISTS

On April 6, 1983, the Nuclear Regulatory Commission (NRC) published an interim final rule implementing Section 12 of the 1982 NRC appropriation act. P.L. 97-415 (1982). 48 Fed. Reg. 14864 (1983). That section, termed the "Sholly amendment" due to its intent to overturn certain aspects of the holding of the D.C. Circuit Court of Appeals in Sholly v. NRC, 651 F.2d 780 (D.C. Cir. 1980), permitted the NRC to make amendments to operating licenses for nuclear power plants effective prior to any requested hearing, upon a preliminary finding that the amendment involves "no significant hazards consideration." The amendment also required the NRC to promulgate standards to define the term "no significant hazards consideration."

In spite of Congress' plainly-stated intention that any standards adopted by the NRC should "draw a clear distinction" between license amendments involving significant and no significant hazards considerations, and that the standards be "capable of being applied with ease and certainty", the

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add Thomas J. Kenan
9604 MNBB

Acknowledged by card. 5/13/83 PD

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proposed standards satisfy neither of these requirements. H.R. Rep. 97-884, P 37 (1982). They are vague and impossible of consistent application.

They also, by the nature and complexity of questions they pose, require a level of analysis that goes far beyond the initial sorting of issues that Congress authorized. In fact, as UCS commented almost three years ago, the use of these standards cannot help but require the NRC Staff to make an intitial determination, well before the formal hearing (if any) is held, of the health and safety merits of the proposed license amendment. Congress did not authorize the NRC to make such determinations in advance of the hearing on the merits.

Furthermore, despite the Congress' direction to the NRC to ensure that "borderline cases" are treated as involving significant hazards considerations (Id.), the new rule indicates that for at least one significant class of license amendment--reracking of spent fuel pools--the NRC is not willing to commit to continue its heretofore unbroken practice of providing prior notice. Given the clear evidence that reracking of spent fuel cannot help but involve significant health and safety considerations, and the uncontradicted Congressional intent that such practice be continued, the NRC's new position is flatly inconsistent with the conservative interpretation of "no significant hazards consideration" expected by Congress.

Finally, the combination of imprecise standards, lack of binding examples, and the NRC's apparent change of position on reracking, demonstarate that if these rules are adopted, no hearings will be offered prior to license amendment. UCS sincerely hopes that the Commission will reconsider its initial decision, and issue final rules consistent with these comments.

I. The Proposed Rule Does Not Clearly Separate License Amendments Involving "No Significant Hazards Considerations" From Those That Do Not Involve Such Considerations.

In enacting the Sholly amendment, the Congress acceded to the Commission's request that it be permitted to make minor license amendments effective prior to any hearing requested pursuant to § 189(a) of the Atomic Energy Act. However, the Congress was sensitive to the potential for abuse of the "no significant hazards considerations" threshold. Therefore, Congress required the NRC to develop guidelines which "draw a clear distinction" between amendments that pose significant and non-significant hazards considerations. In addition, Congres required that the standards be "capable of being applied with ease and certainty." H.R. Rep. No. 97-884, supra, at 37.

The rules proposed by the NRC do not meet this mandate. Instead of drawing clear distinctions, they delegate virtually complete discretion to the NRC staff. The proposed standards, which are restated in full below, rely on unlimited and undefined quantitative terms such as "significant increase" and

"significant reduction," and unpredictable qualitative distinctions such as a "different kind of accident." */ The potential for abuse and misapplication of these standards is obvious.

Unfortunately, the NRC explicitly decided not to include in these rules examples of certain types of license amendments which clearly involve or do not involve significant hazards considerations. The Commission did not adopt its staff's earlier proposal (set forth in SECY 83-16A, dated Feb. 1, 1983) that the following examples be listed as "likely to involve significant hazards considerations":

> (i) A significant relaxation of the criteria used to establish safety limits.
>
> (ii) A significant relaxation of the bases for limiting safety system settings or limiting conditions for operation.
>
> (iii) A significant relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety (such as allowing a plant to operate at full power during which one or more safety systems are not operable).
>
> (iv) Renewal of an operating license.
>
> (v) For a nuclear power plant, an increase in authorized maximum core power level.

---

*/ The Commission may make a final determination...that a proposed amendment... involves no significant hazards considerations, if operation of the facility in accordance with te proposed amendment would not:

> (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
>
> (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
>
> (3) Involve a significant reduction in a margin of safety. Proposed 10 CFR 50.92(c), 48 Fed. Reg. 14871 (April 6, 1983).

(vi) A change to technical specifications or other NRC approval involving a significant unreviewed safety question.

(vii) A change in plant operation designed to improve safety but which, due to other factors, in fact allows plant operation with safety margins of some significance reduced from those believed to have been present when the license was issued.

(viii) Reracking of a spent fuel storage pool.

(ix) Permitting a significant increase in the amount of effluents or radiation emitted by a nuclear power plant. SECY 83-16A Encl. 3A at 25-26.

The Commission totally eliminated viii and ix above, removing them even from the preamble.

Specific examples clearly should be included as part of the rule in order to meet Congress' intent and to make the rule coherent and its application consistent and predictable. We submit that the examples should be modified in the following ways:

-- Items i and ii are simply incomprehensible; we are therefore unable to comment on whether they are appropriate.

-- Item iii should be modified to read as follows:

A significant change in limiting conditions for operation (such as allowing a plant to operate at full power when one or more safety systems are not operable.

The word "change" should be substituted for "relaxation" in order to clarify that an opportunity for a hearing will be available in cases where there is a legitimate question as to the sufficiency of an "improvement" in safety. For example, were the Commission to amend licenses to address the ATWS question, a hearing should clearly be available to determine whether the proposed fix adequately resolves this safety problem.

The phrase which would prohibit the opportunity for hearing when compensating measures are available has been eliminated. The adequacy of the compensating measures is an issue going directly to the merits of the amendment and is not appropriate for the Staff to use as a threshold criterion governing the availability of a hearing.

-- Original items viii (reracking) and ix (increase in radioactive emissions) should be restored.

-- The following criteria should be added:

(x) Reduction in testing or surveillance requirements;

(xi) Relaxation of a deadline for implementing a requirement related to safety;

(xii) Any reduction in the degree of redundancy and/or diversity in systems important to safety.

In addition, we question the repeated use of the term "significant" in the examples. Without any definition, it leaves critical decisions to the unreviewable judgment of the staff. There can be little doubt that the amendments described in all of these examples are not trivial or minor, but involve significant issues of health or safety. While technical solutions may be available to address and resolve the safety questions presented by such amendments, it is precisely these issues that were intended by Congress to be resolved at the hearing itself, not by the NRC staff in a preliminary decision-making process conducted largely out of the public's eye. Cong. Rec., October 19, 1981, p.H7440-41 (Mr. Ottinger).

Nevertheless, the Commission decided in the words of Commissioner Gilinsky, to "downgrade" the importance of the

examples by including them in the preamble "where they will be of little or no legal consequence." 48 Fed. Reg. 14872 (April 6, 1983). This decision is not only unwise, but, because it results in "standards" which are so vague as to be essentially useless, contravenes the intent of Congress. The examples are necessary to give content and substance to the standards, and to carry any legal force they must be placed in the regulations themselves. These examples approach much more closely the Congressionally-mandated goals, previously cited, of "ease and certainty" and usefulness in drawing "clear distinction(s)" between amendments that "involve significant health, safety or environmental considerations" and those that do not.

II. The Proposed Standards Force the NRC Staff to Reach a Conclusion on the Merits of Each License Amendment Before the Public Hearing May Be Held, Rather Than Simply Analyzing the Nature of the Issues Raised by Each Amendment As Congress Intended.

The standards proposed to define and give content to the term " no significant hazards consideration" not only fail to clearly separate amendments involving serious safety issues from those involving no such issues (See Part I, infra.)

Perhaps more important, by the nature and complexity of the questions they pose, these standards force the NRC Staff to undertake a level of analysis that is more appropriate to the ultimate decision on the merits of the license amendment. Congress did not authorize the Nrc to make such a decision in advance of the hearing (if one is requested) on the merits of the amendment. (See, e.g., Cong. Rec., October 19, 1981, p. H.

7440-1 [Mr. Ottinger]; S. Rept. 97-113, p. 14.) The Conference Committee that approved of this legislation emphasized that:

> These standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental considerations. H. Rept. 97-884, p. 37.

It appears that the NRC is mired in the sands of past practice, and fails to appreciate the distinction between the preliminary issue identification required for the initial determination of no significant hazards consideration, and the complete review of the health and safety effects of the proposed license amendment that is necessary for the ultimate decision of approval or disapproval.

Each of the proposed standards require the staff to frame and decide a number of substantial factual questions. For instance, 50.92(c)(1) would require the staff to establish the probability and consequences of previously evaluated accidents (in itself a highly problematic exercise), determine whether and how the requested license amendment would alter either the probability or any consequence of any such accident sequence, and quantify any such change in either the probability or any significant consequence of each sequence. Similarly, 50.92(c)(2) would require the staff to analyze whether and how the requested license amendment could create the possibility of a new or different kind of accident -- a conclusion that will generally not be immediately apparent from the face of the

license amendment. Likewise, 50.92(c)(3) calls on the staff to determine the current "margin of safety" (however defined) of the plant system or systems affected by the requested license amendment, and then to quantify the effects of the action allowed by the amendment of such "margin".

All of these standards appear to be based on the utterly preposterous premise that the level of safety or risk in each plant can be and has been precisely quantified. This degree of quantitative analysis is not now present in either the licenses' applications or the staff's review documents. To implement these standards, licensees will undoubtedly resort to the crudest forms of probabilistic risk analysis -- the regulatory equivalent of scrawling numbers on the back of an envelope.

It should be clear without further exposition that, even if probabilistic methods of analysis were capable of yielding a reasonably objective answer, they go far beyond the threshhold indentification of issues -- triage, if you will -- that Congress contemplated. These standards hardly allow the staff to draw the "clear distinction(s)" that Congress envisioned; they certainly will not "ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration" as the Congress intended. Rather, the issues that the staff must decide under these standard are virtually the same issues that will determine whether the license amendment is approved at all. We do not

believe that the Staff can show how, in any material respect, the analysis necessary for the final approval of a license amendment will differ from the analysis necessary to fully satisfy standards (1)-(3) of this interim final rule.

Finally, in reconsidering these standards -- both with respect to their level of clarity (discussed in Part I of these comments) and their suitability for the triage function discussed in this Part -- the Commission can not ignore the clearly-expressed intent of Congress that

> the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration. Id.

This stricture, along with the previously-cited language directing the NRC to avoid resolving "doubtful or borderline cases" with a finding of no significant hazards consideration, means that the Commission must avoid the reliance on standards that, in everyday use, will result in all but a few license amendments routinely being given the "no significant hazards consideration" stamp of approval.

We are aware that NRC's past practice was to approve all but the most exceptional amendments before offering an opportunity for a hearing. Congress was equally aware of that practice, and the cited language can only represent a clear

command to the Commission to change its ways.*/ The authority given the Commission by the Sholly amendment was not absolute or sweeping, but rather was limited in ways that reflected Congress' strong desire to preserve meaningful public participation in NRC's decision-making processes. Unfortunately, these standards would certainly result in the opposite extreme; because of their reliance on complex and technically questionable factual analyses, as well as their sheer opacity, we have little doubt that the staff will continue to expedite the process for almost every proposed license amendment. Such a result would, in our view, not only contravene the intent of Congress; it would represent a shortsighted public policy, one that is likely to reduce both the quality of NRC's safety reviews of license amendments and the level of the public's respect for the Commission's performance.

III. Amendments Involving Reracking of Spent Fuel Pools Should Be Determined to Involve Significant Hazards Consideration

In enacting the Sholly amendment, the Congress took care to instruct the Commission to err on the side of pre-amendment

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*/ Congress has certainly not approved, by implication, the regulatory approach taken in the Notice of Proposed Rulemaking published March 28, 1980 [45 FR 20491]. Senate Report 97-113, cited in part on 48 FR 14867-8, exhorted the Commission to "build upon" the proposed rules, rather than to adopt them as originally drawn. Likewise, House Report 97-22, Part 2, cited on 48 FR 14868, did not in any way imply approval of or support for the proposed rules. In fact, the House Report's citation of the "long line of case-by-case precedents under which it has established criteria for such determinations" indicates that at least this Committee expected those precedents to form the core of the Commission's regulatory response to this legislation.

hearings by conservatively interpreting "no significant hazards consideration". H.R. Rep. 97-884, supra, at 37. However, the Commission's decision in this rule to remove spent fuel pool reracking from the list of amendments involving significant hazard consideration shows that the Commission is not complying with this Congressional mandate. In the preamble to the proposed rule, the Commission acknowledges that reracking of spent fuel amendments have always been subject to prior notice and hearing, even before the Sholly decision. However, the Commission now has deleted it even from the list of examples of amendments involving significant hazards consideration, declaring that "the matter deserved further study". 48 Fed. Reg. 14869. This change in policy is apparantly based on the Commission's conclusion that some "reracking technology has been well developed and demonstrated." Id.

It should be beyond serious question that reracking of any spent fuel pool involves the use of measures necessary to mitigate the significant hazards to public safety inherent in the process. In fact, reracking of spent fuel assemblies necessitates a detailed, site-specific analysis of many factors important to safety. To simply state that technologies may exist which have adequately resolved those concerns in some cases does not affect the fact that those same serious safety issues must be addressed and resolved in future reracking amendments.

Moreover, even though the technology of reracking may be demonstrated in some cases, the process of reracking poses

additional safety concerns unrelated to the "technology" of reracking itself. For example, at the Maine Yankee Nuclear Power Plant, as well as many other plants, the spent fuel pool shares its cooling system with the main reactor. If an accident damaged the cooling system and blocked access to the spent fuel pool, evaporation of much of the water around the spent fuel could occur within a week. Loss of coolant would be far more dangerous in a crowded pool, since overheating may occur, causing the zirconium metal cladding on the fuel rods to react with any remaining water from potentially explosive hydrogen. In such a case, there would be a strong possibility of an explosion which could breach the spent fuel storage building, releasing radioactive particles which could contaminate nearby areas for up to a century.

A second accident scenario which also raises substantial safety concerns involves the coolant leak which could occur if an airplane or earthquake struck the storage building, or in the event of sabotage. Such a leakage, however, would pose less of a problem at Maine Yankee, which utilizes a pressurized-water reactor (PWR), than at a plant using a boiling-water reactor (BWR). This is because a PWR usually has its spent fuel pool located underground, where the earth surrounding it would tend to contain leaks for a longer period of time. BWRs, on the other hand, house spent fuel pools above ground, where they may drain freely in the event of an accidental leak.

The possibility of either accident graphically demonstrates the various safety-related issues involved in reracking spent fuel pools, regardless of the technology involved. The NRC's sudden shift in its attitude toward this process is not only technically unjustified, but also at variance with clear Congressional intent. On several occasions during the passage of the Sholly amendment, Senators and Congressmen based their approval of the Sholly amendment on their assumption that the NRC would continue its past practice of classifying reracking as a significant hazards consideration amendment, requiring prior notice and opportunity for hearing.

The first reference to the subject occurred in the House of Representatives on November 5, 1981 when the House version of the bill (H.R. 4255) was considered and passed:

> Mrs. SNOWE. Would the gentleman anticipate this no significant hazards consideration would not apply to license amendments regarding the expansion of a nuclear reactor's spent fuel storage capacity or the reracking of spent fuel pools?
>
> Mr. OTTINGER. If the gentlewoman will yield, the expansion of spent fuel pools and the reracking of the spent fuel pools are clearly matters which raise significant hazards considerations, and thus amendments for such purposes could not, under section 11(a), be issued prior to the conduct or completion of any requested hearing or without advance notice.
>
> (127 Cong. Record H 8156) (emphasis added)

The Senate Committee on Environment and Public Works repeated this belief in its report on S.1207:

> The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent

> practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that, consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools.
>
> S. Rep. 97-113, p. 15 (emphasis added).

Finally, Commissioner Asselstine (prior to his appointment) confirmed the existence of this practice in a response to Senator Mitchell:

> Senator Mitchell: There is, as you know, an application for a license amendment pending on nuclear facility in Maine which deals with the reracking storage question. And am I correct in my understanding that the NRC has already found that such applications do present significant hazards considerations and therefore that petition and similar petitions would be unaffected by the proposed amendment?
>
> Mr. Asselstine: That is correct, Senator. The Commission has never been able to categorize the spent fuel storage as a no significant hazards consideration.

Transcript of meeting of Senate Comte on Env. & Pub. Works, quoted in March 15, 1983 letter from Senators Simpson, Hart and Mitchell to Chairman Palladino.

It is therefore not unusual that the Conference Report on this legislation did not specifically mention reracking. The issue had been raised in each House, and there had been complete agreement. Even the the General Counsel and the Executive Legal Director in a memorandum to Chairman Palladino and the Commissioners (copy attached) pointed out:

> In conclusion, we observe that although discussion of this issue is sparse, every reference, on both the House and

Senate sides, reflects an understanding that expansion and reracking of spent fuel pools are matters which involve significant hazards considerations.

Commissioner Asselstine's dissent to these rules is correct. Deletion of reracking from the examples of likely significant hazards is a dramatic change in Commission precedent, as well as directly contrary to express Congressional direction, the Commission's own statements seeking the passage of the Sholly amendment,and sound public policy. 48 Fed. Reg. 14872-73 (April 6, 1983).

Conclusion

We support the Congressional intent behind the Sholly amendment. In some limited circumstances, involving minor technical amendments which do not affect safety, the requested hearing may legitimately be held after the amendment takes effect. However, the NRC's rules go far beyond the limits of the amendment and its legislative history, essentially allowing the NRC unlimited discretion to exempt all license amendments from prior hearings, even those which obviously involve significant health, safety, or environmental considerations. Despite the Commission's protestations to the contrary, the demotion of the list of examples of categories of significant hazards consideration amendments and the change in consideration of reracking is evidence that the NRC has already prejudged that whole issue of significant hazards consideration, and that most, if not all, license amendment

requests will not be allowed prior hearings. The final rules should restore reracking to the list of examples, and restore examples as modified herein, to the rule itself.

Respectfully submitted,

Ellyn R. Weiss

Lee L. Bishop

HARMON & WEISS
1725 I Street N.W.
Suite 506
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(202) 833-9070

Dated: May 6, 1983

(4)

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May 4, 1983

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attention: Docketing and Service Branch

NOTICE AND STATE CONSULTATION
INTERIM FINAL RULE; 48FR14873; APRIL 6, 1983

We are pleased to submit our comments on the subject interim final rule.

The new section 50.91(a)(5) describes an emergency stituation as one that would result in "derating or shutdown" if the Commission fails to act in a timely way. We suggest that an emergency situation should also exist where a plant already in shutdown could be prevented from starting up because the Commission had failed to act in a timely way.

The new section 50.91(a)(6)(i) and (ii) includes provisions for public notice via local media or other "best efforts," in instances of exigent circumstances where time does not permit the standard 30 days notice in the Federal Register. These special actions are not required by Congress and are not necessary. The public is adequately and sufficiently served by the opportunities granted by the 30-day public notice and hearings which may be held after issuance of an immediately effective amendment. Provisions for exigent circumstances should be no different than those provided in Section 50.91(a)(5) for emergency situations.

We appreciate this opportunity to assist in the improvement of this interim final rule, and hope that the above comments will be of use to you.

R. B. Bradbury
Chief Engineer, Licensing Division

Enclosure

DJC:MC

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The Indiana Sassafras Audubon Society

of Lawrence, Greene, Monroe, Brown, Morgan & Owen Counties

DOCKET NUMBER PROPOSED RULE PR-50 (10)
48FR 14564

May 5, 1983

TO: U.S. NUCLEAR REGULATORY COMMISSION

FROM: THE INDIANA SASSAFRAS AUDUBON SOCIETY

RE: STANDARDS FOR DETERMINING WHETHER LICENSE AMENDMENTS INVOLVE NO SIGNIFICANT HAZARDS CONSIDERATIONS

Sassafras Audubon is opposed to the No Significant Hazards Consideration Interim Final Rule of the U.S. Nuclear Regulatory Commission on grounds that the NRC has 1) deleted examples of types of significant hazards amendments from the rule itself, and 2) deleted reracking of spent fuel pools from the list of significant hazards consideration amendments.

There is clear evidence that reracking of spent fuel pools involves significant health and safety considerations, and this has been considered so, generally. Commissioner Asselstine has noted in his additional views that,

> "The Commission majority's interim final rule would change the Commission's longstanding and consistent policy of requiring that any requested hearing on a license amendment for the reracking of a spent fuel pool be completed prior to granting the license amendment.", and
>
> "It is clear to me from the legislative history of section 12 of Public Law 97-415 that the Congress did not intend that the authority granted by Section 12 should be used to approve reracking amendments prior to the completion of any requested hearing."

We ask that this proposed interim final rule not be adopted.

Yours sincerely,

Mrs. David G. Frey

Mrs. David G. Frey
Energy Policy Committee, SAS
2625 S. Smith Road
Bloomington, Indiana 47401

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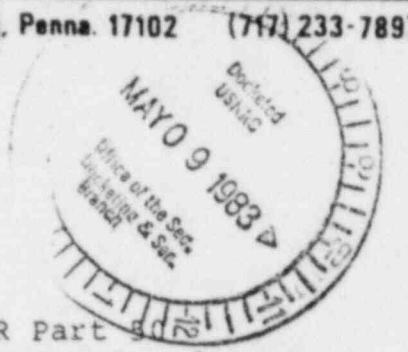
TMIA: THREE MILE ISLAND ALERT, INC.

315 Peffer St., Harrisburg, Penna. 17102 (717) 233-7897

May 5, 1983

SHEET NUMBER PROPOSED RULE PR-50 (48 FR 14864) (1)



Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Interim Final Rule Comments -- 10 CFR Part [illegible]
Standards for Determining Whether License Amendments Involve No Significant Safety Hazards Consideration

Three Mile Island Alert hereby opposes the above-referenced interim final rule implementing the so-called "Sholly amendment." These regulations violate the express intent of Congress in failing to "draw a clear distinction between license amendments involving significant and no significant hazards considerations," and which are "capable of being applied with ease and certainty." H.R. Rep. 97-884, P 37 (1982). Moreover, they violate Congress' plainly-stated intent that these standards only require the staff to spot possible health, safety or environmental issues before holding a prior hearing, not "require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment," id., as these vague standards demand.

In promulgating these regulations, the NRC virtually ignores Congress' express intent that license amendments involving irreversible consequences (such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections) require prior hearings or the public's right to have its views considered would be foreclosed. Id. at 38. The people in the TMI area, who were unlawfully exposed to radiation during the venting of 1980 and are certain to be exposed to additional radiation releases during the TMI-2 clean up, and are now being told that the staff may try to use the new law to avoid public hearings to examine the massive TMI-1 steam generator tube repairs, are particularly concerned by the NRC's position here. As Congress explained, if the license amendment resulted in the illegal exposure to the public of dangerous amounts of radiation, an after-the-fact hearing would be meaningless, and could not remedy the damage done. Congress sought specifically to avoid this possibility by virtually eliminating the NRC's discretion when irreversible consequences are involved. The regulations, which provide no standards defining when irreversible actions will be accorded prior hearings, are flatly inconsistent with Congress' stated intent because they give the NRC virtually unbridled discretion in these situations.

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The Commission even rejected the staff's earlier proposal that among the examples listed in the preamble as "likely to involve significant hazards consideration," was "permitting a significant increase in the amount of effluents or radiation emitted by a nuclear power plant." SECY 83-16A Encl. 3A at 25-26. This now appears at § 50.92(b) as a situation which only requires "sensitivity." But, by adding the word "significant" to Congress' express conference report language, even this watered-down standard would violate Congress' express intent, by inserting an unreviewable subjective determination by the NRC staff of what is "significant." The regulation should require a prior hearing whenever irreversible consequences are involved, except for those situations which the NRC clearly defines as not requiring a prior hearing.

The fundamental problem with these regulations is that they do not provide any guidance for solving many important issues that arise in practice. For example steam generator problems present important issues of concern to the public at a number of nuclear plants. Barely one month after the enactment of P.L. 97-415 the House sponsor of the law, Rep. Morris K. Udall stated: "I am troubled by reports I have heard that some on the NRC staff believe this authority might be used to approve steam generator repairs at Three Mile Island Unit-1. Congress enacted the Sholly provision so that NRC could redirect its attention and resources away from trivial matters and concentrate instead on matters of great public concern and safety significance such as TMI-1 steam generator repair work." Statement before House Subcommittee on Energy and the Environment, Committee on Interior and Insular Affairs, Oversight Hearing on NRC's Budget Request for Fiscal Years 1984 and 1985, February 22, 1983, p.6. Notwithstanding this clear statement from Congress the NRC did not trouble to clarify whether such an issue would be considered by the NRC to be one involving "significant hazards consideration."

The most peculiar deficiency of these regulations is that they fail altogether to address the very issue which prompted the enactment of P.L. 97-415. One of the two TMI-2 license amendments addressed in the Sholly decision involved the temporary waiving of radiation release limitations so that airborne radioactive waste could be released at a rate in excess of that which would have been allowed the reactor if operating. The question whether this amendment involved a significant hazards consideration was hotly contested in the Court of Appeals. The Court of Appeals did not answer this question because it instead found that a hearing was clearly required under § 189 of the Atomic Energy Act, when requested, whether or not such an amendment involves a significant hazards consideration.

The NRC, concerned that "most requested license amendments involving no significant hazards consideration are routine in nature...", sought to reverse the "implications" of this ruling in Sholly, for routine license amendments. 48 Fed. Reg. 14866 col. 1. But it did not ask Congress for authority to deny prior hearings in cases presenting the same facts such as those involved in Sholly itself.

Congress did change § 189 to provide that not all NRC hearings on "no significant hazards consideration" license amendments need be prior hearings. But it did not indicate that it considered the release of radioactive wastes from TMI-2 at higher rates than allowed an operating reactor to be a "routine" amendment for which a prior hearing could be waived.

In lieu of the earlier per se hearing requirement, applied in Sholly, Congress has now placed greater weight on increased participation, notice and precision in formulation of the "no significant hazards consideration" finding itself. Congress now requires consultation with the affected State, it requires some notice, and most importantly requires regulations that "draw a clear distinction between license amendments that involve a significant hazards consideration" and those which do not. H.R. Rep. 97-884, at 37 (1982).

These regulations fail to formulate a standard for making such a "clear distinction" for the very case which gave rise to the legislation. Never did the NRC or Congress in the course of the deliberations on P.L. 97-415 address the actual facts of Sholly. This Congress left for the NRC to do through promulgation of regulations; and this the NRC has failed to do.

An even more egregious example of the NRC's failure to follow Congressional intent in drawing clear distinctions between issues that involve significant hazards considerations, and those that do not, concerns the reracking of spent fuel. Despite Congress' direction to the NRC to ensure that "borderline cases" are treated as involving significant hazards considerations, H.R. Rep. 97-884 at 37, the Commission has removed from its preamble list of examples of amendments involving significant hazards consideration the reracking of spent fuel. It is clear that the reracking of spent fuel cannot help but involve significant health and safety considerations, and that this example evidences further disregard by the NRC of Congress' clear mandate.

For all of the above reasons, TMIA opposes these regulations.

Joanne Doroshow

TMIA

JOHN J. KEARNEY, Senior Vice President

EDISON ELECTRIC INSTITUTE The association of electric companies

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DOCKET NUMBER PR-50 (13)
PROPOSED RULE (48FR14864)

May 6, 1983

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Subject: Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations (48 FR 14864, April 6, 1983)

Dear Mr. Chilk:

The Edison Electric Institute (EEI) offers the following comments on the NRC interim final rule on standards for determining whether license amendments involve no significant hazards considerations. EEI is the association of the nation's investor-owned electric utilities. Its members serve 99.6 percent of all ultimate customers served by the investor-owned segment of the industry, and generate more than 77 percent of all of the electricity in the country. EEI's members currently operate 72 of the nation's nuclear power plants licensed to operate by the NRC, and expect to operate an additional 49 units now under construction or in planning.

In the preamble discussing the basis for the interim final rule, the Commission notes that it is not including the reracking of spent fuel pools in the list of examples that will be considered likely to involve a significant hazards consideration. 48 Fed. Reg. 14869. EEI believes that this is an appropriate position because it gives the NRC the flexibility to act as needed on a case-by-case basis. The exclusion of reracking as such an example permits an objective finding on the technological considerations of such an amendment while it in no way requires the NRC to find that any amendment for reracking does not pose a significant hazards consideration. In response to Congressional concerns, the Commission properly states that it does not intend to make a no significant hazards consideration finding based on unproven technology, and further has directed the Staff to prepare a report that will provide the basis for a technical judgment that a specific spent fuel pool expansion amendment may or may not pose a significant hazards consideration.

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The NRC recently has devoted and is continuing to devote a considerable amount of time to detailed examination of ways to improve its licensing procedures. The treatment of reracking in the interim final rule is an example of good Commission judgment that permits thorough consideration of public health and safety concerns without a predetermination committing NRC and licensee resources to possibly needless licensing actions.

Sincerely yours,

John J. Kearney
Senior Vice President

JJK:spj

(12)

DOCKET NUMBER
PROPOSED RULE PR - 50
(48 FR 14864)

BALTIMORE GAS AND ELECTRIC

CHARLES CENTER · P. O. BOX 1475 · BALTIMORE, MARYLAND 21203

JOSEPH A. TIERNAN
MANAGER
NUCLEAR POWER DEPARTMENT

May 6, 1983

Secretary, U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTENTION: Docketing and Service Branch

SUBJECT: Request for Public Comment on Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations

References: (a) Federal Register 14876, April 6, 1983

Gentlemen:

The Baltimore Gas and Electric Company requests that you consider the following comments prior to any actions by the Commission on the Final Rule concerning Standards for Determining whether License Amendments involve No Significant Hazards Considerations.

On April 6, 1983, the Commission published in Reference (a) an Interim Rule imposing a requirement for the Commission to pre-notice all license amendment applications after May 6, 1983. This Interim Rule was published in response to a District Court decision favoring Sholly in the Sholly v. NRC case of 1980. In a more favorable treatment than the interpretation provided by the District Court decision, the Interim Rule provides for issuance of license amendments prior to pre-noticing, if the proposed amendment can be categorized as an emergency or exigent situation and does not involve a significant hazards consideration.

In effect, the Interim Rule legislates a minimum thirty-day deferment for the majority of amendments sent to the Commission. This proposed delay clearly has the potential for causing unnecessary lag in operating schedules (which may result in finanical burden on the Licensee) and indirectly defeats the intended purpose of the Technical Specifications. We offer the following example as one of several that might be cited in support of this position.

One of the basic purposes of the Technical Specifications is to ensure the operability of safety-related equipment is maintained for all applicable modes of operation. The Commission recognizes that redundancy in certain types of safety-related equipment allows individual components within the train to be temporarily removed from the Technical Specification operability requirements with no significant reduction in safety. This is manifested in certain Technical Specifications and this philosophy provides

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operational flexibility to preclude unnecessary shutdowns or delays in start-up upon failure of certain types of equipment.

A scenario illustrating the above could originate during a short duration forced outage. In this case the licensee identifies a piece of failed equipment and upon investigating the Technical Specifications for the equipment, the licensee observes that start-up and continued operations is allowed. The licensee is faced with a decision. He can choose the preferred path and replace the failed equipment. But, if replacement requires prior NRC approval (as would be the case if the replacement were of a different type and required a change in the Technical Specifications) under the proposed licensing methodology the licensee must expose himself to a possible delay in startup.

This delay arises as a result of, 1) the interpretation that an amendment would not be classified as emergency or exigent since the licensee is not constrained by the Technical Specifications from an operating standpoint, and 2) the Commission would be required to pre-notice the amendment application. An interpretation of the Interim Rule contained in Reference (a) appears to recognize this type of situation and provides an exemption from publication in the Federal Register, but still requires public notice via local media with reasonable comment period. Although an exemption of this type may create a delay of a duration less than the thirty day delay associated with publication in the Federal Register, any delay creates a financial burden on the licensee. As a result, the licensee may (and will in many cases) elect to defer replacement of the failed component. The impact of such decisions inevitably show up at some time in the future if additional channels of equipment fail and force the licensee into action statements requiring shutdown or derating. We feel that the impact of these delays on the Industry are not justified in light of the relatively small potential benefit derived by allowing the public to comment on proposed amendments prior to issuance.

In addition to the above example, we feel the proposed Interim Rule needs some clarification in certain areas.

In specifying an optional approach for notification of the public of a proposed license amendment, the Interim Rule allows the Commission to use the media with distribution in the area surrounding a licensee's facility. The Interim Rule does not specify the extent of that area, but rather leaves it open to interpretation. We recognize that certain remote sites may not have media coverage in the near vicinity of the site. But, for those sites covered by local media we feel it appropriate to provide some guidance on the extent of media coverage.

Under section 50.91(a)(5) of the Interim Rule the Commission uses the term "timely" in refering to the licensee's applications for amendments. Since the term "timely" is left open to interpretation and, correspondingly, may not be applied in a consistent manner with all licensees, the rule should state what is considered a timely application from the licensee and should also indicate the normal time required by the Commission to process non-exigent applications.

Example (vi) provided under Examples of Amendments that are considered not likely to involve significant hazards considerations specifies a comparison of the licensees application for meeting the Standard Review Plan (SRP). This comparison may be overly restrictive on some older licensees and, therefore, present undue hardship in certain cases. We suggest that any comparison of the licensees application be made to either original or current licensing bases rather than the SRP.

The Interim Rule fails to recognize two areas in providing for the exigency clause. One area involves the situation where the licensee is shutdown and identifies a license amendment necessary to meet start-up requirements of the license. (We have referred to this case in the above example). The other case involves an amendment that identifies a significant hazards consideration. In both cases any delay in obtaining Commission approval and issuance of an amendment required for power operation could present a significant financial burden on the licensee. The Interim Rule should be consistent in addressing the exigency of all cases where the licensee may lose power production as a result of pending application for license amendments.

As a final comment we observe that Reference (a) cites nine responses to the original proposed rule. We find it difficult to believe that the Industry has so little to say about a proposed rule that has the potential for causing such large delays in the licensing process. We suspect that the lack of Industry comment was a result of the pending litigation which delayed the original proposed rule. Stated in other terms, the issues surrounding the proposed rule were inadvertantly downgraded due to the delays introduced by District Court actions. Publication of the Interim Rule, in effect, bypassed the opportunity for wide consideration and public comments, before the effective date. To avoid similar circumstances we suggest the Commission act in a more timely manner when publishing Interim Rules in the future. However, we commend the Commission in taking the action with respect to publishing the Interim Rule (to avoid enactment of a more onerous interpretation provided by the Sholly decision).

Should you have questions regarding the comments we have provided, we would be pleased to discuss them with you.

for Manager
Nuclear Power Department

JAT/LOW/sjb

cc: J. P. Bennett
R. E. Denton
D. W. Latham
A. E. Lundvall
R. C. L. Olson
L. B. Russell

(9)

LeBoeuf, Lamb, Leiby & MacRae

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May 6, 1983

Samuel J. Chilk, Esq.
Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Re: Interim Final Amendments to 10 C.F.R. §§ 50.58 and 50.92

Dear Mr. Chilk:

On April 6, 1983, the Nuclear Regulatory Commission published interim final rules to govern its consideration of operating license amendment requests in light of the statutory changes contained in Public Law 97-115. Although the interim final rules adopted by the Commission become effective on May 6, the Commission has requested public comment and has indicated that the rules are subject to further consideration. As attorneys representing a number of utilities involved in the Commission's licensing and regulatory process, we wish to offer our comments on certain provisions of the interim final rule published at 48 Fed. Reg. 14864.

In the Supplementary Information for that rule, the Commission has set forth a number of examples of amendments that are considered not likely to involve significant hazard considerations. Included in those examples is an application for a license amendment to accommodate changes resulting from a reactor core reload where there are no significant changes from a previous core at the same reactor. We endorse

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the inclusion of routine reload applications in the category of amendments that will not normally involve significant hazard considerations.

A second example given by the Commission is a license amendment to reflect "a change to a license to reflect a minor adjustment in ownership shares among co-owners already shown in the license." We agree that such a license amendment clearly involves no significant hazard considerations. However, we are concerned that the quoted definition is overly restrictive and, by negative implication, suggests that other changes in ownership could involve significant hazard considerations. The Commission's experience in recent years indicates that (1) changes in the ownership of nuclear reactors, including the deletion or addition of participants, are quite common and (2) such changes normally do not involve any change in the responsibility of a lead utility for the construction and operation of the reactor. In our view, no change in ownership has any possible safety significance unless the responsibility of the lead utility is altered as a result. We therefore suggest that the example given by the Commission should be broadened to include all changes in ownership shares so long as there is no change in the responsibility for construction or operation of the reactor in compliance with the Commission's regulations.

The Commission has refrained from categorizing applications for reracking of spent fuel storage pools as likely or not likely to involve significant hazard considerations. We support the determination of a majority of the Commissioners that reracking applications should not automatically be subject to prior notice and an opportunity for a hearing. Reracking has become routine in the industry, involves technology which has been repeatedly reviewed by the Commission and its staff, and should not require a finding that a significant hazard consideration is involved. We agree with the majority of the Commissioners that Congress did not foreclose a determination that no significant hazard consideration is involved in reracking. We trust that upon completion of the staff review directed by the Commission, the interim final rule will be further amended to make clear that the routine reracking applications will be considered not likely to involve significant hazard considerations.

Sincerely,

LeBoeuf, Lamb, Leiby & MacRae

PROPOSED RULE PR-50 (6)
(48FR 14864)

The Light company Houston Lighting & Power P.O. Box 1700 Houston, Texas 77001 (713) 228-9211

May 5, 1983
ST-HL-AE-958
File No: G3.15

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Dear Mr. Chilk:

Comments Regarding the
Interim Final Rules -
"Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations" and "Notice and State Consultation"

On April 6, 1983, the Nuclear Regulatory Commission published "interim final rules" entitled, "Standards for Determining Whether License Amendments Involve No Significant Hazards Consideration" and "Notice and State Consultation," (48 Fed. Reg. 14864-80). Houston Lighting & Power Company has reviewed the interim final rules and offers the following comments.

We understand that these interim final rules are the means by which the Commission is implementing Section 12 of Public Law 97-415. As set forth in more detail below, we believe that the regulations and the Commission's intent should be clarified as to those situations which constitute an "emergency."

Under the new 10CFR50.91(a)(5), the Commission may issue a license amendment involving no significant hazard consideration without prior notice and opportunity for a hearing when the Commission makes the determination that an "emergency" situation exists, "in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant..."

Neither "shutdown" nor "derating" is defined in the regulation. A narrow interpretation of the terms "shutdown" and "derating" would limit application of the regulation to circumstances where a plant is actually operating at power and suspension of operation or reduction of power output are imminent unless a license amendment is immediately issued. Under this interpretation the regulation would not apply to start-up of a plant which has been shutdown for any one of a number of reasons (e.g., refueling, minor repairs, maintenance, interruption of transmission system, etc.) or to an increase of power output by a plant which, for similar reasons, is operating at a power level below the licensed limit.

5/13/83
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We believe such a narrow interpretation is not consistent with the legislative intent of Public Law 97-417. We therefore recommend that 10CFR50.91(a)(5) be amended to make it clear that an "emergency" situation can exist whenever it is necessary for a plant that has been shutdown to return to operation or for a derated plant to operate at a higher power level by inserting after the words "derating or shutdown of a nuclear plant" the following words: "including any prevention of either resumption of operation or increase in power output up to its licensed power level."

The new 10CFR50.91(a)(5) will require licensees to provide to the Commission an analyses using the standards in 10CFR50.92 concerning the issue of significant hazards considerations. The supplementary information in the Federal Register Notice lists examples of amendments that are considered likely to involve significant hazards considerations and examples of amendments that are considered not likely to involve significant hazards considerations. The supplementary information further states that the guidance embodied in these examples will be referenced in procedures of the Office of Nuclear Reactor Regulation (NRR). Because licensees will be required to make their own analyses, we recommend that the guidance embodied in the examples also be formally transmitted to all licensees and applicants in the form of a generic letter, regulatory guide, etc.

Very truly yours,

M. R. Wisenburg
Manager
Nuclear Licensing

TAP/na

cc: J. H. Goldberg
J. G. Dewease
C. G. Robertson
J. E. Geiger
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May 6, 1983

Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Comments on Interim Final Rules: Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations; 48 Fed. Reg. 14864; Notice and State Consultation; 48 Fed. Reg. 14873 (April 6, 1983).

Dear Mr. Chilk:

On behalf of Arkansas Power & Light Company, Carolina Power & Light Company, Duke Power Company, Florida Power Corporation, Nebraska Public Power District, Northeast Utilities, South Carolina Electric & Gas Company, Texas Utilities Generating Company and Washington Public Power Supply System, we appreciate the opportunity to comment on the interim final rules implementing Section 12 of the NRC Authorization Act, Pub. L. No. 97-415, 96 Stat. 2067, published at 48 Fed. Reg. 14864 on April 6, 1983. The Federal Register notice contained two sets of rules governing the issuance of operating license amendments involving no significant hazards considerations. The first set establishes standards for determining whether an operating license amendment request involves no significant hazards considerations. The second set establishes procedures for prior notice for public comment and state consultation on the Commission's no significant hazards determination, and prior notice of opportunity for hearing. The Commission requested comments specifically on the "workability" of the proposed noticing procedures. We offer comments on both the notice procedures and the standards.

I. Background

Prior to 1981, the Commission's practice was to issue license amendments not involving significant hazards considerations without affording an opportunity for a prior hearing. This practice was held to be improper in Sholly v. NRC, 651 F.2d 780 (D.C. Cir. 1981), vacated and remanded, 51 U.S.L.W. 3610 (February 22, 1983). In Sholly the D.C. Circuit ruled that a prior hearing, if requested, must be held even if the requested amendment is determined not to involve significant hazards considerations. The Commission sought legislation to change the result reached by the court in Sholly, and the result was Section

12 of the Authorization Act. Regarding the need for legislation, the Commission, in the Statement of Considerations preceding the no significant hazards standards, states that:

> [S]ince most requested license amendments involving no significant hazard consideration are routine in nature, prior hearing on such amendments could result in unwarranted disruption or delay in the operations of nuclear plants and could impose regulatory burdens upon it and the nuclear industry that are not related to significant safety matters.[1]

The resulting legislation decoupled the Commission's decision on the merits of issuing the amendment from its determination about prior versus post issuance notice when no significant hazards considerations are involved. This separation of issues was carried through in the interim final rules by separate rules establishing standards under 10 C.F.R. §50.92 and noticing procedures under 10 C.F.R. §50.91.

II. Notice Procedures

In developing procedures to implement Section 12 of the Authorization Act, the Commission has been sensitive to the fact that the "no significant hazard consideration" standard has no substantive safety significance, but rather is a procedural standard. In the Statement of Considerations accompanying the interim final rule establishing notice and state consultation procedures, the Commission stated that:

> [It] has attempted to provide noticing procedures that are administratively simple, involve the least cost, do not entail undue delay, and allow a reasonable opportunity for public comment; nevertheless, they are quite burdensome and involve significant resource impacts and timing delays for the Commission and for licensees requesting amendments.[2]

In this section we address the Commission's request for comments on the workability of the noticing procedures. We believe that our comments, if incorporated into the final rule, would expedite the process for issuing operating license amendments by alleviating unnecessary sources of delay, yet preserve the rights of those who wish to participate in the comment process.

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1 48 Fed. Reg. at 14866.

2 48 Fed. Reg. at 14877.

Section 12 of the Authorization Act requires the Commission to promulgate rules ". . . for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment . . ." regarding the Commission's proposed determination of no significant hazards considerations. Interim final rules 10 C.F.R. §2.105 and §50.91(a)(2) implement this requirement. In situations involving routine amendment requests, the interim final rule would require publication pursuant to 10 C.F.R. §2.105 of notice of proposed action including the Staff's proposed no significant hazards determination, a brief description of the amendment and the facility involved, and would solicit public comments on the proposed determination.[3] Notice would be published in the Federal Register either as an individual notice or in a monthly compilation of amendments requested and issued. Section 50.91(a)(2) would provide a thirty-day period for comment on the preliminary determination of no significant hazards consideration and to request a hearing.

In exigent situations, 10 C.F.R. §50.91(a)(6) would permit the Commission to use whatever means are available through use of the local media to inform the public of a proposed amendment and would provide a "reasonable opportunity" for public comment by whatever means of communication it can for the public to respond quickly. Notice would be published in the monthly compilation in the Federal Register as well.

The effective date of the interim final rule is May 6, 1983. With respect to amendment requests received, but not acted upon, before the date, the Statement of Consideration provides that "the Commission proposes to keep its present procedures and not provide notice for public comment". Further, the first paragraph of new Section 50.91 states: "The Commission will use the following [new] procedures on an application received after May 6, 1983 requesting an amendment to an operating license." Notwithstanding the Commission's statement and the regulations, we are advised that the NRC Staff intends to apply the new notice procedures to requests for amendments received prior to May 6 but not issued by that date.[4] So far as we are aware, the Staff did not employ any formal mechanism to alert licensees of the delay which would be occasioned by this decision to apply the new rule retroactively, nor of the need for license to submit "emergency" or "exigent" justifications if the need for prompt action

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3 48 Fed. Reg. at 14879 (interim final 10 C.F.R. §50.91(a)(2)).

4 The Staff has indicated, however, that Licensees will not be required to submit a "no significant hazards" analysis for such amendment requests; the analysis will be performed by the Staff for amendments requested before the effective date of the interim final rule.

warrants elimination or shortening of the notice and comment period. If this is the staff's position, it is contrary to new Section 50.91.

It is essential that the Commission maintain the flexibility to tailor the license amendment review process as we propose below depending on the nature of the particular amendment requested. This is necessary to ensure that the process for review and issuance of the license amendments functions without undue delay under these new procedures. The number of operating license amendments issued by the Commission continues to increase each year. In 1974, 186 operating license amendments were issued, 157 of which involved no significant hazards considerations.[5] By 1977 the number of amendments issued increased to 547, 483 of which involved no significant hazards considerations.[6] Not only has the number of amendments increased, but the overwhelming majority of those issued have involved no significant hazards considerations. By contrast, the number of requests for hearing on operating license amendment applications has been very small. In 1974, only three hearings were requested and in 1977 there were only eight such requests.[7]

With a new generation of plants coming on line following the licensing hiatus after Three Mile Island, the number of amendment requests will only continue to increase. Under the 30-day notice procedures set forth in interim final section 50.91, we believe it is reasonable to assume that an additional 60 days, at a minimum, will be required to process even routine amendment requests. For routine requests, which constitute the bulk of all amendment requests, the procedures set forth are cumbersome, time consuming and serve no valid health or safety purpose. For those instances, the sole effect of the notice, comment and state consultation process will be to bog down the processing of amendments.

We offer two principal comments on the notice procedures which we believe will further expedite the amendment review process. The first concerns the time period for notice and the second involves the method of publication. Section 12 of the Authorization Act does not mandate a 30-day period for public comments. A shorter period would provide sufficient opportunity for public comment while reducing delay in issuing amendments which could result from the notice and comment process described

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5 Nuclear Powerplant Licensing Delays and the Impact of the Sholly Versus NRC Decisions, Hearings Before the Subcomm. on Nuclear Regulation of the Senate Comm. on Environment and Public Works, Serial No. 97-H11, 97th Congress, 1st Sess. 296 (1981) (hereinafter, "Senate Hearings").

6 Id.

7 Id.

in the interim final rule. We believe that ten days would provide adequate opportunity for public comment in all cases (except, of course, emergencies where prior notice is dispensed with). As previously stated, a thirty-day comment period could add perhaps sixty days to the time required to process amendments. We do not believe this is desirable and, further, that it is not consistent with the Commission's intent to minimize delay. For example, in the situation where a plant has been shut down for refueling and the Licensee determines that an an amendment is necessary prior to startup because of a minor change in the characteristics of the core resulting from the fresh fuel, any delay in processing the amendment occasioned by the comment period could be extremely costly to the Licensee and would adversely affect its ability to conduct adequate system planning.

In this regard, we are advised that the Office of the Executive Legal Director ("OELD") has taken the position that the procedures applicable in exigent circumstances (i.e., when a Licensee faces shutdown or derating) would not be available when a plant is already shut down. We find no basis for the decision that exigent circumstances cannot be invoked in order to expedite review of an amendment necessary for start-up. Licensees should be able to take advantage of expedited procedures in any case in which a timely request is made and the circumstances justify a prompt turnaround. The staff should not limit applicability of such procedures to certain narrow situations.

We propose the following changes in the notice procedures to shorten the comment period and clarify the method of publication. Routine, minor amendments should be published in the monthly Federal Register compilation only and a ten-day comment period accorded. There should be no individual Federal Register notice in routine cases. An individual notice should be published in the Federal Register for requests that are not routine, such as, for instance, steam generator modifications or reracking. These requests could also be published in the monthly compilation, but the comment period should run from the date of the individual notice. As in the case of routine amendments, we propose a ten-day comment period. In exigent circumstances, which could encompass either routine or non-routine requests, we propose that notice be published individually in the Federal Register and that a reasonable comment period be accorded taking into account the facts of the particular case.

Inasmuch as the Commission must have concluded that the expedited notice provisions would satisfy the statutory requirements in exigent circumstances which do not qualify as emergencies, there is no reason why comparable procedures could not be used in all situations. The courts have recognized that expedited procedures are the appropriate solution when notice and hearing are statutorily required, but time is of the essence. See, e.g., Consumer Federation of America v. FPC, 515 F.2d 347,

354 n.43 (D.C. Cir. 1975) (temporary certificate exempting certain gas sales from certification requirements): Pennsylvania Gas & Water Company v. FPC, 427 F.2d 568, 576 (D.C. Cir. 1970) (temporary certificate authorizing rate to assure gas supply); Marine Space Enclosures. Inc. v. Federal Maritime Commission, 420 F.2d 577, 588 (D.C. Cir. 1969) (Expedited approval under Shipping Act of 1916 of contract to construct port facilities). See also Administrative Procedure Act, §4(c), 5 U.S.C. §556. Use of expedited procedures would eliminate a large source of delay by shortening the turnaround time from perhaps 60 additional days to around 20 additional days, yet would retain the necessary notice and opportunity for public comment.

We are strongly opposed to use of press releases or display advertising in the local media to provide notice of opportunity for public comment in exigent circumstances. Timely notice can be provided in the Federal Register as quickly as through the media. Since most amendment requests involve routine matters having little or no significance to plant safety, use of the media would unnecessarily elevate the importance of such requests. We are also strongly opposed to the suggestion in the Statement of Considerations that a toll-free "hot-line" to the NRC be established to facilitate rapid public response in exigent circumstances, because the "hot line" concept carries implications of imminent danger or severe safety concerns which most often will not be present. Instead, the Commission should require that mailgrams or overnight express services be used to file comments in exigent circumstances. In the event the Commission decides to implement a hot-line system, it should confine its use to extraordinary amendments involving unique circumstances and provision should be made to ensure the accuracy of transcription of the comments received. Such comments should be recorded and retained so that a verbatim transcript could be produced if needed. The transcript should be produced for interested parties at a reasonable charge and would assure a reliable record of all comments telephoned in.

The amendment process itself is overburdened by a tremendous number of routine matters which ought not require license amendments. Many of the routine matters for which amendments are deemed necessary should not be subject to the license amendment process at all. For instance, not every change in plant Technical Specifications should require license amendment. Routine matters not involving unreviewed safety questions should be treated as changes not requiring a license amendment under 10 C.F.R. §50.59. Far greater use should be made of Section 50.59 for changes involving routine matters. The Staff should be cognizant of this and avoid placing matters of a routine nature in the Technical Specifications which then necessitates a license amendment. In this regard, the Commission recently received comments on proposed amendments to 10 C.F.R. Part 50 concerning

Technical Specifications.[8] The proposed changes would allow licensees to make changes in Technical Specifications within certain bounds and under prescribed conditions without obtaining prior NRC approval.

III. Standards Governing Determination of No Significant Hazards Consideration

The second set of interim final regulations establishes standards for assessing whether a requested license amendment involves a significant hazards consideration. 10 C.F.R. §50.92(c)[9] provides that the Commission may make a final determination that an operating license amendment for a power reactor involves no significant hazards considerations, if operation of the facility pursuant to the proposed amendment would not:

(1) Involve a significant increase in the probability of consequence of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.[10]

The regulations provide further that "[t]he Commission will be particularly sensitive to a license amendment request that involves irreversible consequences," such as an amendment authorizing an increase in the amount of effluents or radiation emitted by a facility.[11]

The Statement of Consideration accompanying the interim final rule includes examples of amendments which are likely, and those not likely, to involve significant hazards considerations. Amendments likely to involve significant hazards considerations include those authorizing a significant relaxation of the criteria used to establish safety limits; a significant relaxation of the bases for limiting safety system settings or limiting conditions for operation; and an increase in maximum core power level. Examples of amendments not likely to involve significant hazards considerations include amendments authorizing purely administrative changes to technical specifications; changes that constitute an additional limitation, restriction or control not included in plant Technical Specification; and

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8 47 Fed. Reg. 13369 (March 30, 1982).

9 48 Fed. Reg. at 14871.

10 10 C.F.R. §50.92(c), 48 Fed. Reg. at 14871.

11 10 C.F.R. §50.92(b), 48 Fed. Reg. at 14871.

changes to reflect minor adjustment in ownership shares among co-owners already shown in the license. Although the Commission indicated in the Statement of Considerations that it does not intend to be limited to or bound by these examples, we nonetheless offer the following comments on the examples.

Example (viii)[12] provides that minor adjustments in ownership shares among co-owners shown in the license should not involve significant hazards considerations. We believe that the considerations applicable to adjustments involving new co-owners which are subsidiaries, parents or affiliates of existing co-owners, so long as there is no alteration of the lead Licensee's control over construction or operations should lead to a similar result. The example should be revised to so state specifically.

Example (ii)[13] provides that changes which constitute an additional limitation, restriction or control not included in plant Technical Specifications would not be likely to involve significant hazards considerations. We would expand this example to encompass any change in the facility or procedures which is plainly a move in a more conservative direction.

During Congressional hearings on the impact of the Sholly decision, the Commission stated that when a nuclear power plant refuels, the Technical Specifications "often need to be adjusted to reflect the physical behavior of the fresh fuel placed in the reactor core."[14] The Commission used as an example technical specifications which require a flux ratio of 1.17, but when the flux ratio is calculated for the core following refueling, the licensee finds that the ratio should be 1.15 for the next operating cycle. The Commission stated "[t]hat this is a license amendment. It is not a safety question, there is no significant hazards consideration involved but under the Sholly decision you would have to have a hearing . . .".[15] The Commission has gone a long way toward addressing this problem in the example, designated "(iii)", of circumstances which will not likely be found to involve significant hazards considerations. However, we urge the Commission to clarify that example by expressly illustrating the "change" to which it refers as including (though not limited to) routine adjustments in Technical Specifications necessitated by non-significant differences in physical characteristics of the fresh fuel from the previous fuel.

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12 48 Fed. Reg. at 14870.

13 Id.

14 Senate Hearings, supra, at 175-176 (prepared statement of Chairman Hendrie).

15 Senate Hearings, supra, at 139 (testimony of Chairman Hendrie).

We also have comments on the examples of amendments likely to involve significant hazards considerations. Example (v) provides that an increase in authorized maximum core power level is likely to involve significant hazards considerations. We believe that in situations where the maximum core power level which has been reviewed by the staff exceeds the power level actually authorized by the license, that any susequent increase in power level up to the level which was reviewed and a favorable conclusion reached by Staff (subject only to confirmation or verification of some kind) should be considered not likely to involve significant hazards considerations since that power level has already been reviewed. This is in contrast to a situation in which an amendment is sought to permit operation at a maximum core power level in excess of the design basis which was reviewed and approved.

The Statement of Considerations provides that the Commission should be particularly sensitive to proposed amendments which involve "irreversible consequences", such as an increase in the amount of efluents or radiation emitted from a facility. The same argument applicable to "stretch power" situations should apply here. If the discharge or emission level evaluated in the Safety Analysis Report, the Final Environmental Statement or generically by rulemaking (i.e., Part 50, Appendix I) would equal or exceed the proposed level of emissions, any permanent increase up to that level should not be considered likely to involve signifcant hazards considerations, and any temporary increase within generally recognized radiation protection standards, such as those in 10 C.F.R. Part 20, should be treated similarly.

We have two comments regarding the standards set forth in interim final 10 C.F.R. §50.92(c) for determining whether an amendment involves no signifiant hazards considerations. First, with respect to criterion (3), significant reduction in safety margins, we believe the Commission should initially determine how large the existing safety margin is before deciding whether a reduction is signficant. For example, a 10% reduction in a 1000% safety margin should not be treated as significant while a one-half reduction in a 20% margin might be. The extent of the existing margin is clearly relevant to the Commission's determination under this standard.

As to criteria (1) and (2), regarding accident probability or conseguences, we urge that the Commission should consider only credible accident scenarios in evaluating a requested amendment under these standards. Accident scenarios which have been raised in Commission rulemaking or licensing proceedings and rejected as not credible should not be given credence in making the no significant hazards determination.

IV. Conclusion

We believe that these comments would eliminate potential sources of delay in the interim final rules. We appreciate the opportunity to comment on the interim final rules implementing Section 12 of the NRC Authoriation Act. We trust that the Commission will consider these comments, and we urge it adopt them in order to further expedite the new procedures for issuing operating license amendments.

Respectfully submitted,

J. Michael McGarry/JCS

J. Michael McGarry
Jeb C. Sanford

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PROPOSED RULE PR-50 (11)
(48 FR 14864)

SECRETARY OF THE COMMISSION
US NUCLEAR REGULATORY COMMISSION
DOCKETING AND SERVICE BRANCH
WASHINGTON DC 20555

RE: STANDARDS FOR DETERMINING WHETHER LICENSE AMENDMENTS INVOLVE NO SIGNIFICANT HAZARDS CONSIDERATIONS.
THE SEA COAST ANTI-POLLUTION LEAGUE FINDS THE STANDARD IN THE INTERUM FINAL RULE PUBLISHED AT 48 FR 14864 VAGUE AND UNSATISFACTORY. THE NRC COMMENT UNDER PART A BACKGROUND THAT THERE IS "NO INTRINSIC SAFETY SIGNIFICANCE" TO THIS STANDARD IS ABSURD IN THE EXTREME. SAPL OPPOSES

1. DELETIONS OF EXAMPLES OF TYPES OF SIGNIFICANT AMENDMENTS FROM THE RULE ITSELF AND
2. DELETION OF RERACKING OF SPENT FUEL POOLS FROM LIST OF SIGNIFICANT HAZARDS CONSIDERATION AMENDMENTS. SAPL URGES THE INCLUSION OF CLEAR EXAMPLES AND SUPPORTS MODIFICATIONS AND ADDITIONS PROPOSED IN THE UNION OF CONCERNED SCIENTISTS COMMENT ON THIS RULE. RESPECTFULLY SUBMITTED
JANE DOUGHTY FIELD DIRECTOR SEACOAST ANTI-POLLUTION LEAGUE 5 MARKET ST PORTSMOUTH NH 03801

13:01 EST

MGMCOMP

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Acknowledged by card. 5/13/83 PD

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

May 6, 1983

Secretary, U.S. Nuclear
Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Comments on Interim Final Rule Regarding No Significant Hazards Considerations

Dear Chairman Palladino, and Commissioners Gilinsky, Ahearne, Roberts and Asselstine:

On April 6, 1983, the Nuclear Regulatory Commission (NRC) published an interim final rule implementing Section 12 of the 1982 NRC Appropriation Act. P.L. 97-415 (1982). 48 FR 14864 (1983). That section is intended by Congress to, inter alia, alter the effect of the holding of the D.C. Circuit Court of Appeals in Sholly v. Nuclear Regulatory Commission, 651 F.2d 780 (D.C. Cir. 1980). In particular, the Act directs the NRC to promulgate regulations which outline whether an amendment to an operating license involves no significant hazards considerations. The Maine Yankee Atomic Power Station is located in the State of Maine. Therefore, this State has a very real and clear interest in the promulgation of standards relating to amendments to Maine Yankee's operating license. Of even more significance is our concern, as a matter of public policy, that the law be carried out as Congress intended. The following comments are submitted in pursuance of that interest.

The interim final rule comports with neither the intent nor the clear statutory language of the "Sholly" provision. The

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rule does not resolve the issues Congress intended be addressed. Rather, the rule continues, compounds and creates problems.

I. THE INTERIM FINAL RULE DOES NOT "DRAW A CLEAR DISTINCTION" BETWEEN LICENSE AMENDMENTS THAT INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS AND THOSE THAT DO NOT.

The Sholly provision was intended to permit the NRC to make minor operating license amendments effective prior to any hearing requested pursuant to the Atomic Energy Act. In permitting such, Congress directed the NRC to develop standards that drew a clear distinction between license amendments that involve a significant hazards consideration (i.e., those amendments which require a prior hearing) and those that involve no significant hazards consideration (i.e., no prior hearing necessary), and mandated that such standards should ensure that the NRC Staff does not resolve borderline cases with a finding of no significant hazards considerations. The interim final rule, as published, in no way meets the expectations of Congress and its legislation; indeed, the interim final rule creates standards which undermine the intent of Congress.

Congressional intent could not have been more manifest with respect to the type of standards it expected the NRC to promulgate pursuant to the Sholly provision. The Senate Committee on Environment and Public Works stated:

> "[T]he Committee expects the [NRC] to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration." S. Rep. No. 97-113, 97th Cong., 1st Sess., at 15 (1981) (emphasis added).

The Conference Report reiterated this intent and went even further:

> "The conferees also expect the [NRC], in promulgating the regulations required . . . to establish standards that to the extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those amendments

> that involve no such consideration. These standards should not require the NRC Staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the Staff to identify those issues and determine whether they involve significant health, safety or environmental consideration. These standards should be capable of being applied with ease and certainty, and should ensure that the NRC Staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 37 (1982) (emphasis added).

Thus, Congress' mandate that a "clear distinction" be drawn was founded on the desire that there be standards which are easily applied and provide, to the maximum extent practicable, a degree of certainty with respect to the application of a finding of significant hazards consideration. In addition, and of the utmost importance, Congress sought to ensure that doubtful or borderline cases be resolved in favor of a finding of significant hazards consideration and that the NRC Staff not involve itself at this initial stage with prejudging the merits.

The interim final rule in no way comports with the Sholly provision or the congressional intent underlying it. Indeed, the interim final rule merely compounds the problem Congress intended to be resolved. It is difficult, if not impossible, to find any "clear distinction" being drawn in the standards so that borderline cases do not result in a finding of no significant hazards consideration. Worse yet, upon close reading, the interim final rule actually blurs distinctions.

The interim final rule provides, in pertinent part, that the NRC may make a final determination that a proposed amendment involves no significant hazards considerations if the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involved a significant reduction in the margin of safety. 10 CFR § 50.92(c). The terms used in the interim final rule, such as "significant increase," "significant reduction" and "different kind of accident," are vague and undefined terms which in no way provide clear distinctions. The potential for misapplication of these standards is obvious. The interim final rule uses these vague

and broad phrases rather than providing standards, as contemplated by Congress, which set forth clear and easily applied distinctions. These standards cannot be applied with ease and certainty, and do not, to the maximum extent praticable, provide a clear distinction. This is obvious from the very history and preamble of the interim final rule.

As the NRC is well aware, prior drafts of the rule included specific examples of the types of amendments which would be deemed likely to involve significant hazards consideration so that a hearing would be necessary prior to an amendment. Examples such as reracking of spent fuel pool storage and permitting a significant increase in the amount of effluents emitted were included in these prior drafts. See SECY 83-16A dated February 1, 1983. Therefore, clearly, the NRC and its Staff are capable of providing more distinctly written examples under the standards which will provide clear distinctions. In view of this history, it insults logic for anyone to contend that the present interim final rule draws the distinctions to the maximum extent practicable where it does not draw the distinctions that have been clearly set forth in prior drafts.

Rather than writing the examples into the standards, the NRC has chosen to set forth in the Federal Register Notice examples of amendments that involve or do not involve significant hazards considerations. What use will be made of those examples is unclear. The notice only states the examples will be "referenced," in some unknown and unclear manner. The State of Maine believes that examples should be written into the standards in order to meet Congress' intent. Indeed, even assuming the utility of this "preamble", the "Examples" beg the issue. The examples of amendments that are considered likely to involve significant hazards considerations use such broad phrases as "significant relaxation" and "significantly reduced". Again, these provide no clear distinction.

Further, the preamble's examples of amendments that are considered not likely to involve significant hazards considerations only confuse the issue. Example vi is: "A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin . . .." However, the interim final rule itself provides that there will not be finding of no significant hazards considerations where the proposed amendment would involve a significant increase in the probability of consequences of an accident or involve a significant reduction in the margin of safety. 10 CFR 50.92(c). Thus, a grey area is already created as to how the purported example and how the interim final rule fit together,

i.e. what happens if there is more than "some increase" but less than a "significant increase." Presumably, any matter falling within this grey area is a borderline case which will be determined to likely involve significant hazards considerations and, thus, require a prior hearing. However, this is not spelled out in the rule or preamble; it should be. Thus, as this example typifies, it is impossible to find any clear distinction in the "Examples" or the interim final rule, either separately or read together.

The State makes the following specific comments on the examples of amendments that are considered likely to involve significant hazards considerations:

1. Examples i and ii are so vague and broad as to be not susceptible to comment.

2. Example iii should be modified so that the reference to accompanying compensatory changes, conditions or actions be omitted. It is wholly irrelevant for the purpose of the preliminary significant hazards determination whether or not there may be compensatory measures. Indeed, whether or not certain measures are compensatory is best left to the hearing itself. Moreover, whether a proposed amendment is a relaxation is a question that should also be left to the hearing; therefore, the word "alteration" should be used rather than "relaxation."

3. The examples for reracking and increases in the amount of effluent or radiation emitted, previously referenced and included in the draft of the interim final rule should be included in the rule. Further, the NRC should set forth additional clear examples of particular types of amendments so that clear distinctions are indeed drawn.

Again, the examples should be written into the rule.

With respect to examples of amendments are considered not likely to involve significant hazards considerations contained in the Federal Register Notice, we note that Example vi only complicates matters, as noted above.

Finally, we note that the interim final rule contravenes the intent of Congress that the NRC Staff not make a decision in advance of the hearing. The three standards set forth in 10 CFR 50.92(c) are incredibly broad, and beg for prejudgment by the NRC Staff. The interim final rule requires the staff to

analyze and decide a number of substantial factual questions. Rather than drawing a clear distinction, the interim final rule only provides a broad base for the NRC staff to engage in a case-by-case prejudgment of proposed license amendments, thereby contravening the intent of Congress that there be ease and certainty in application of the rule to ensure borderline cases be determined to involve significant hazards considerations.

II. LICENSE AMENDMENTS INVOLVING RERACKING OF SPENT FUEL POOLS DO INVOLVE SIGNIFICANT HAZARDS CONSIDERATION.

If nothing else, Congress intended that reracking of spent fuel pools be considered to involve significant hazards considerations. By not including reracking in the interim final rule as a type of amendment that involves a significant hazards consideration, the NRC is directly contravening the Congressional mandate.

The legislative history is filled with this understanding and intent. The NRC staff originally recommended that reracking be considered as involving significant hazards considerations but the NRC itself did not embrace this position. By doing so, the NRC is unjustified and at odds with Congress.

Everything in the record on this matter supports the conclusion that reracking be considered to involve significant hazards considerations. There is not even a hint contrary thereto. Whenever the issue was raised, Senators and Congressmen expressed their understanding and intent that the NRC would classify reracking as a significant hazards consideration amendment, requiring prior opportunity for a hearing.

During consideration of the House Bill (H.R. 4255), Congresswoman Snowe from Maine made direct inquiry on reracking:

> Mrs. SNOWE. Would the gentleman anticipate this no significant hazards consideration would not apply to license amendments regarding the expansion of a nuclear reactor's spent fuel storage capacity or the reracking of spent fuel pools?
>
> Mr. OTTINGER. If the gentlewoman will yield, the expansion of spent fuel pools and the reracking of the spent fuel pools are clearly matters which raise significant hazards

> considerations, and thus amendments for such purposes could not, under section 11(a), be issued prior to the conduct or completion of any requested hearing or without advance notice.
> (127 Cong. Record H 8156) (emphasis added)

The Senate Committee on Environment and Public Works reiterated this understanding in its Report on S. 1207:

> "The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that, consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools.
> S. Rep. 97-113, p. 15 (emphasis added).

In the Senate, Senator Mitchell, also from Maine, expressed his understanding with respect to reracking, which understanding was confirmed by then-Counsel Asselstine, during an exchange during the mark-up of the bill:

> Senator Mitchell: There is, as you know, an application for a license amendment pending on nuclear facility in Maine which deals with the reracking storage question. And am I correct in my understanding that the NRC has already found that such applications do present significant hazards considerations and therefore that petition and similar petitions would be unaffected by the proposed amendment?
>
> Mr. Asselstine: That is correct, Senator. The Commission has never been able to categorize the spent fuel storage as a no significant hazards consideration. Senate

> Comte on Envir. & Pub. Works, quoted in March 15, 1983 letter from Senators Simpson, Hart and Mitchell to Chairman Palladino.

All references in the Senate and the House, therefore, confirm, and in no way undermine, the conclusion that reracking presents significant hazards considerations. Even if some doubt were present, the Conference Committee's admonition that the NRC standards "should ensure that the NRC Staff does not result doubtful or borderline cases with a finding of no significant hazards considerations," requires reracking be deemed to involve significant hazards considerations.

Even the NRC's General Counsel and the Executive Legal Director agree with the discussion hereinabove. In a memorandum to Chairman Palladino and the Commissioners, they concluded:

> [E]very reference, on both the House and Senate sides, reflects an understanding that expansion and reracking of spent fuel pools are matters which involve significant hazards considerations.

Commissioner Asselstine's dissent to these interim final rules provides an accurate analysis on this matter. Deletion of reracking from the examples of likely significant hazards changes Commission precedent, and directly contradicts clear and express Congressional direction, the Commission's own justification in requesting the Sholly provision, and strong public policy. 48 FR 14872-73 (April 6, 1983). We agree with that Commissioner's assessment.

Our concern with this interim final rule with respect to reracking arises naturally from the potential impact on the current licence amendment request by Maine Yankee which is now being considered by an Atomic Safety and Licensing Board. Although the adoption of such a rule might theoretically affect the existing licensing proceeding, we would hope that common sense would dictate that the existing Maine Yankee licensing proceeding would go forward as scheduled. We retain, however, a concern that the process might somehow be affected. Further, and perhaps more importantly, we express our concern as a matter of public policy, on our own behalf as well as on the behalf of other States which have yet to face the issue as to whether to become involved in future reracking proposals. Legislative history behind P.L. 97-415 clearly contemplates that reracking is an example of licensing amendments involving significant hazards considerations. Even if the Commission may

have doubts about declaring reracking as an example of the license amendment posing significant hazards considerations, thus being a borderline matter, any doubt should be resolved with the Conference Committee language in mind. The conclusion in Chairman Palladino's memorandum dated March 30, 1983, to the other Commissioners that reracking deserves only "further study," contravenes clear Congressional intent. The Congress has already spoken on this issue.

III. CONCLUSION.

We respectfully request that the NRC seriously consider the comments set forth hereinabove. The State of Maine supports the congressional intent behind the Sholly provision. Minor technical amendments which do not affect safety need not have a prior hearing before the amendment takes effect. However, the NRC interim final rule contravenes the Sholly provision and its legislative history by not drawing clear distinctions in the rule so that borderline and arguable cases are deemed to involve significant hazards considerations so that prior hearings may be held. Further, the deletion of reracking as a type of amendment that involves significant hazards considerations from the rules directly contravenes clear congressional direction on the matter. Reracking must be incorporated into the final rules.

Respectfully submitted,

JAMES E. TIERNEY
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PHILIP AHRENS

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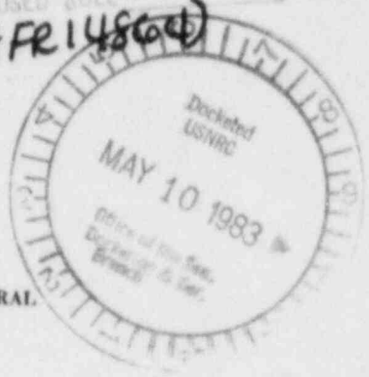
Augusta, Maine 04333

PR-50 (15)

PROPOSED RULE
(48FR14864)

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

May 6, 1983

Secretary, U.S. Nuclear
Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Comments On Interim Final Rule Involving State Consultation With Respect to Determinations Involving No Significant Hazards Considerations

Dear Chairman Palladino and Commissioners Gilinsky, Ahearne, Roberts and Asselstine:

On April 6, 1983, the Nuclear Regulatory Commission (NRC) published an interim final rule implementing Section 12 of the 1982 NRC Appropriations Act, P.L. 97-415 (1982). 48 FR 14873 (1983). That section, inter alia, directs the NRC to establish procedures for consultation on any no significant hazards consideration determination with the State in which the facility involved is located. We are writing to present comments on the interim rule. The State of Maine is separately commenting on the interim final rule involving no significant hazards considerations.

The Maine Yankee Atomic Power Station is located at Wiscasset, Maine. The State of Maine, therefore, has an obvious interest in assuring there is effective consultation between the NRC and it with respect to amendments to Maine Yankee's operating license. Of even more significance is our concern, as a matter of public policy, that the law be carried out as Congress intended.

It is the State of Maine's position that the interim final rule, as presently written, does not provide effective consultation with the State, as contemplated by Congress.

Congress intended that there be a very real and effective involvement of the States in the determination process. Congress expected that the procedures for State consultation would include at the very least certain elements, including:

1. The State would be notified of a licensee's request for an amendment.

2. The State would be advised of the NRC's evaluation of the amendment request.

3. The NRC's proposed determination of whether the license amendment involves no significant hazards consideration would be discussed with the State, and the NRC's reasons for making that determination would be explained to the State.

4. The NRC would listen and consider any comments provided by the State official designated to consult with the NRC.

5. The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment. Conf. Rep. No. 97-884, 97 Cong., 2d Sess. at 39 (1982).

Congress, therefore, contemplated that the State and the NRC be in consultation from almost the instant the request for amendment is made. The interim final rule does not provide for such, and, in fact, fails to effectively incorporate elements 2, 3, 4 and 5.

The interim final rule provides that the State will be notified of a request for an amendment by having the licensee forward a copy to the State. 10 CFR § 50.91(b)(1). Thereafter, the State is advised of the "proposed determination about no significant hazards consideration" only by being sent a copy of the Federal Register Notice. 10 CFR § 50.91(b)(2). The NRC will make available to the State the names of the Project Manager or other NRC personnel the NRC has designated to consult with the State. If the NRC does not hear from the State in a timely manner, it will consider the State to have no interest in its determination. 10 CFR § 50.91(b)(3). Essentially, what the interim final rule proposes is that the State receive copies of the licensee's amendment request and the NRC's Federal Register Notice, and if the State wants to involve itself in the process it may try to by calling up the

NRC Staff. There is no effort by the Staff to advise or consult with the State. This in no way effects the process contemplated by Congress. The letter and spirit of the five elements should be written into the rule.

As clearly evinced by elements 2 and 3 set forth in the Conference Report, Congress contemplated that the State would be advised by the NRC of the NRC's evaluation of the amendment request, and the NRC would seek active discussion with the State for reasons for the NRC's proposed determination on the request. The interim final rule, however, merely calls for the State to be presented with the fait accompli, i.e., the Federal Register Notice, with the onus on the State to bring itself into the process after the determination had been prejudged. Congress intended that the process would be a cooperative, intermingling consultation between the State and the NRC Staff from the time the licensee's request for amendment is made. The Conference Report, thus, calls for procedures which provide the State with the NRC's evaluation of the amendment request before Federal Register Notice is sent out, and for discussions before proposed determination is memorialized in the Federal Register. Only in this way is there effective consultation and cooperation with the State. Otherwise, the matter is determined before any real involvement of the State. The procedures, therefore, should require the NRC Staff to provide the State with its evaluation of the amendment request before the Federal Register Notice thereon is published; and should provide for the scheduling of formal discussions between the State and the NRC on the proposed determination, with the foregoing of such only upon written waiver of the State.

With respect to element 4, the NRC should be required to identify the comments of the State and set forth how such were resolved by the NRC. This identification and analysis should be written into the proposed determination notice in the Federal Register. Only in this way is there the requisite assurance that the NRC Staff did, in fact, listen to the State.

With respect to element 5, the NRC Staff should be required to do more than merely "attempt" to telephone State officials before issuing an amendment.

The interim final rule does not provide for formal, active consultation by the NRC with the States. Congress contemplated that there would be a heightened cooperation between the State and the NRC in dealing with license amendments to facilities within a particular State. The interim final rule, at best, effects only the casual involvement of the State in the process. It calls for no formal consultation with the State on

the evaluation of the amendment or on the proposal of the NRC with respect thereto. Nor does it in any way indicate how the concerns and comments of the State will be memorialized. The State of Maine fully supports the intent of Congress that a cooperative effort between the States and the NRC be created. In furtherance of this, the interim final rule should be changed to incorporate the comments and suggestions contained herein.

Respectfully submitted,

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PHILIP AHRENS

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YANKEE ATOMIC ELECTRIC COMPANY

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1671 Worcester Road, Framingham, Massachusetts 01701

FYC 83-7
2.C.2.1

May 6, 1983

Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Subject: Comments on Interim Final Rules Pertaining to:
(1) Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations (48FR14864, 6 April 1983); and
(2) Notice and State Consultation (48FR14873, 6 April 1983)

Dear Sir:

Yankee Atomic Electric Company appreciates the opportunity to comment on the subject document. Yankee Atomic owns and operates a nuclear power plant in Rowe, Massachusetts. The Nuclear Services Division also provides engineering and licensing services for other nuclear power plants in the Northeast including Vermont Yankee, Maine Yankee, and Seabrook 1 and 2.

I. Introduction and Summary

We observe at the outset that these interim final rules are the Commission's response to the recent mandate of Congress in Public Law 97-415. That legislation addresses specifically the ruling in 1980 of the U.S. Court of Appeals for the District of Columbia Circuit in Sholly v. NRC. The narrow decision in Sholly, which did not survive Public Law 97-415, would have required NRC to complete any public hearing concerning license amendments in advance of making the licensee's amendment effective and regardless of whether the NRC had found that the proposed amendment involved no significant hazards considerations. At issue in Sholly was the extent of procedural due process the Commission must afford to the public, when issuing amendments to operating licenses.

Congress overturned the narrow decision in Sholly, so that public hearings will not normally delay the effective dates of license amendments. We believe that the legacy of Sholly, however, clearly manifest in these interim final rules, is that adding new layers of procedural due process will impair administrative efficiency. Seldom does a federal regulatory agency reduce the amount of procedural due process its rules of practice must by law afford to the public. When it must increase its procedural safeguards, however, there is a price to pay. Despite Sholly's statutory demise via Public Law 97-415, it is clear to us that nuclear utilities, whose license

amendments affecting their legitimate property interest are now subject to greater delays prior to issuance than they were before Sholly, will foot the bill for administrative due process.

In our comments below, we seek to emphasize that rational judgments concerning public safety can occur, while still protecting the public's rights to due process. We believe the question of how much due process must be accorded to license amendment procedures is satisfactorily resolved in the new rules. The questions that remain, however, are: "When may a licensee's interest in prompt amendment issuance justify dispensing with prior notice and opportunity for public comment prior to its issuance?", and "When are license amendments necessary?" We address these questions in our discussion below.

II. Discussion

A. When May a Licensee's Interest In Prompt Amendment Issuance Justify Dispensing With Prior Notice And Prior Opportunity for Public Comment? (Notice and State Consultation -- Interim Final Rule).

Pursuant to our review of this rule, we believe the most critical provisions deal with the Commission's discretion to waive the procedural requirements, which would normally prevent an amendment from issuing any time sooner than 30 days from date of application (e.g., in order to provide opportunity for public comment on any determination whether significant hazards considerations exist).

In particular, Section 50.91 would apparently restrict the granting of exemptions only to emergency situations that could "result in derating or shutdown". Also, Section 50.91 provides that such emergency exemptions may be withheld, if the licensee "has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision."

We are concerned the Commission may read the legislation in Public Law 97-415 too narrowly. We believe the Commission should continue its practice of acting swiftly, when licensees special circumstances warrant expediency without sacrificing safety, and issue license amendments consistent with a licensee's property interests in generating electricity for public use. The public has a great interest in protecting its supplies of electric energy, just as its interest is great that it be accorded due process in the regulation of nuclear power plants. Thus, we believe the interim final rule must be interpreted, in practice by the Commission, to achieve a proper balance between the interests of licensees and the interests of the public.

B. When are License Amendments Necessary? (Standards for Significant Hazards Considerations -- Interim Final Rule).

The new criteria for determining whether Significant Hazards Considerations exist (new Section 50.92), are virtually identical to the criteria applicable for determining whether Unreviewed Safety Questions exist

(existing Section 50.59). In our judgment, these criteria are appropriate for determining whether an amendment may be made effective in advance of the completion of any public hearing on its issuance (Section 50.92), just as they are also appropriate for determining whether proposed changes to a facility will require prior approval plus a license amendment (Section 50.59). We believe these criteria should be very similar, if not identical, since they are a subjective standard that has been used uniformly and with little uncertainty in its past applications, under Section 50.59 determinations.

In this regard, we agree with Commission's judgment contained in the Supplementary Information portion of the subject notice, that license amendments associated with routine core refuelings are "not likely to involve significant hazards considerations," [Item (iii)].

We must assert, however, contrary to the Supplementary Information portion of the notice, that not all changes to Technical Specifications are "likely to involve significant hazards questions," [Item (vi)]. Many changes to technical specifications associated with core-refuelings consist of small numerical variations to fuel cycle-dependent parameters, which are routinely calculated, verified, and monitored using Commission-approved analytical methods and administrative procedures. Our considerable experience in this activity, as well as the experience of other licensees we are aware of, is that most of these changes are unlikely to constitute a significant hazards consideration under new Section 50.92 of the rule. Thus, we believe that any formally established presumption to the contrary, albeit not codified by regulation, but used by the NRC staff in practice, is an inappropriate standard for NRC Staff decisions concerning procedural due process, regarding hearings on license amendments.

We believe that under a more rational system of administrative controls, Section 50.59 of the Commission's regulations could permit changes to Technical Specifications without the present requirements of prior approval plus amendment, when such changes can be demonstrated to not create any unreviewed safety question according to the familiar criteria now in use. This departure from the existing practice of requiring prior approval plus amendment, for any-change-whatsoever to the Technical Specifications, regardless of its safety significance, would require an amendment to existing Section 50.59. It would have a desirable effect of reducing the need for many license amendments. We are attaching, as part of our comments today (for information only, and not as a petition for rulemaking under Section 2.802 of the Commission's regulations) one possible form for a revision to Section 50.59 that is consistent with the discussion above (Attachment A). In addition, we have considered how to merge this idea together with the Commission's proposed rule concerning a new system of license specifications in Section 50.36, which would permit many changes without need for license amendment (47 FR52454). We also attach, for your information, an illustration of how these changes to Section 50.59 and to Section 50.36 would result in a system of license specifications that provides for changes and addresses the associated question of whether such changes would require a license amendment Attachment B. We would be happy to discuss these ideas further with the Commission.

III. Closing Remarks

In our opinion, progressive changes to current Commission practice regarding the administration of license amendments could be achieved without compromising concerns for protecting public health and safety. The existing requirements of prior approval plus amendment to any change to a Technical Specification may at one time have been a necessary means for the NRC to supervise licensee activities in the important area of Technical Specifications. Now, however, in consideration of such improvements as today's sophisticated analytical techniques, accurate core-surveillance capability, and widespread use of Standard Technical Specifications, we believe the time has come to consider a change to Section 50.59.

In sum, such a provision could reduce the annual paperwork burden associated with NRC and licensee processing of license amendments associated with small routine changes to certain Technical Specifications, which do not present any unreviewed safety questions. Fewer unnecessary license amendments could mean cost savings attributable to a more realistic Section 50.59, to offset the increased expense of procedural due process that has been occasioned by the Commission's rulemaking after Sholly.

Very truly yours,

YANKEE ATOMIC ELECTRIC COMPANY

Robert E. Helfrich

Robert E. Helfrich
Generic Licensing Activities

REH/bal

Attachment

Attachment to FYC 83- 7

10CFR50.59 (Showing Proposed Changes "[ ]")

50.59 Changes, tests and experiments.

(a)(1) The holder of a license authorizing operation of a production or utilization facility may (i) make changes in a facility as described in the safety analysis report, (ii) make changes in the procedures as described in the safety analysis report, and (iii) conduct tests or experiments not described in the safety analysis report, without prior Commission approval, unless the proposed change, test or experiment involves [a change in the technical specifications incorporated in the license or] an unreviewed safety question.

[Delete]

(2) A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced.

[Insert (3)]

[(3) (NEW) A change in the technical specifications incorporated in the license shall not be deemed to involve an unreviewed safety question if the licensee makes the determinations required pursuant to paragraph (a)(2) of this section using methods found previously acceptable for purposes of the written safety evaluation required by paragraph (b) of this section.]

(b) The licensee shall maintain records of changes in the facility and of changes in procedures made pursuant to this section, to the extent that such changes in the facility as described in the safety analysis report or constitute changes in procedures as described in the safety analysis report [Insert]. The licensee shall also maintain records of tests and experiments carried out pursuant to paragraph (a) of this section. These records shall include a written safety evaluation which provides the bases for the determination that the change, test, or experiment does not involve an unreviewed safety question.

[or involve changes to the technical specifications incorporated in the license.]

Attachment B

REVISED SYSTEM OF LICENSE SPECIFICATIONS

Yankee's Suggested Revision to 10CFR50.59 (See Attachment A)
and
NRC's Proposed Rule to Amend 10CFR50.36 (See 47 FR52454)*

	Technical Specifications	Supplemental Specifications*
No prior NRC approval or license amendments required for changes provided licensee makes the determination using tests for:	. no "Unreviewed Safety Question" (U.S.Q.)	. no "Decrease in Effectiveness (D.I.E.)
Applied to:	. cycle-dependent core physics parameters . limiting safety system settings . LOCs	. surveillance frequency . calibration accuracy tests . systems-state requirements
Relative Safety Significance of Category:	. greater importance	. lesser importance
Relative Standard for Satisfying Test:	. more stringent: no "U.S.Q." (Methods require prior review and approval)	. less stringent: no "D.I.E." (Methods do not require prior review and approval)

NORTHEAST UTILITIES
THE CONNECTICUT LIGHT AND POWER COMPANY
WESTERN MASSACHUSETTS ELECTRIC COMPANY
HOLYOKE WATER POWER COMPANY
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(17)
PR-50
(48FR 14864)

May 10, 1983

Docket Nos. 50-213
50-245
50-336
50-423
B10784

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
1717 H Street
Washington, D. C. 20555

Gentlemen:

Haddam Neck Plant
Millstone Nuclear Power Station, Unit Nos. 1, 2, & 3
Comments on Interim Final Rules
Notice and State Consultation
Standards for Determining Whether License
Amendments Involve No Significant Hazards Considerations

In 48FR14864 and 48FR14873, the Commission promulgated interim final rules on the above captioned subjects, in accordance with the provisions of Public Law 97-415. Connecticut Yankee Atomic Power Company (CYAPCO) and Northeast Nuclear Energy Company (NNECO) hereby provide the following comments on these interim final rules.

General Comments

Our general perspective is that these regulations will not significantly, if at all, improve the safety of nuclear power plants. The reviews and evaluations previously utilized to process license amendments were adequate to assure continued public health and safety. As with many other previous NRC initiatives, these new regulations will require the use of our limited resources in areas which we perceive will not enhance nuclear safety. The additional resources being expended to fulfill these new regulations are therefore being applied at the expense of other voluntary activities which could otherwise be accomplished. However, we fully recognize that these rules are being implemented to fulfill congressional mandates, and that under these circumstances the NRC has considerably less latitude regarding the final scope and specific provisions of these rules than would otherwise be the case. Given that Congress has required their implementation, we offer the following comments and observations in the interest of minimizing their negative impact.

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add Thomas L. Laurain 9604 MNBB

5/18/83 PD

The trend within NRC for the past several years has been to dramatically increase the scope and volume of Technical Specifications. Over the course of time, the Technical Specifications have become cluttered with a considerable amount of superfluous detail not truly appropriate or necessary to satisfy the intent of 10CFR50.36. One of the by-products of this trend is that more license amendments are being processed than nuclear safety considerations warrant.

The Commission apparently recognizes this problem and has published a proposed rule (47FR13369) which is stated to be directed at addressing this concern. Our general endorsement of this concept and other pertinent observations were provided in previous correspondence(1). The subject interim final rules further serve to heighten the importance of taking steps to alleviate this situation in the near term. However, we are concerned that the Commission may not have fully recognized the synergistic effects which would occur if both these proposals are implemented in their current form. There are also a number of other issues where the implications of these interim final rules either lack clarity or have the potential to yield additional adverse synergistic effects. The balance of this letter is intended to identify and discuss these matters.

Interpretation of 10CFR Part 170

In a recent proposed rule (47FR52454), the NRC has proposed to amend the existing regulations governing payment of fees associated with, among other things, processing of license amendment requests. The key element of the proposed changes relates to assessment of fees based upon actual NRC resources expended rather than a fixed fee for various classes of amendments.

If the Part 170 changes are issued as proposed, after May 6, 1983 resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It is our view that licensees would not be the "identifiable recipient of benefits" resulting from this more involved process. As such, licensees should not be assessed fees for any expenses resulting from the public notice, State consultation, and other consequential or follow-up activities which may result. The legislative history behind Public Law 97-415 makes it clear that licensees are not the prime beneficiaries of this new license amendment process. Therefore, licensees should not be assessed additional fees to finance this activity.

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(1) Previous submittals addressing this matter include the following:

- W. G. Counsil letter to the Secretary of the Commission dated September 8, 1980, Proposed Rulemaking Regarding Technical Specifications.
- W. G. Counsil letter to the Secretary of the Commission dated May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.
- W. G. Counsil letter to the Secretary of the Commission dated April 25, 1983, Proposed Rulemaking Regarding Technical Specifications.

Interpretation of the Term "Emergency"

The term "emergency" suggests the occurrence of a nuclear plant situation where public health and safety is in immediate jeopardy. The interim final rules use the term "emergency" to describe situations where failure to act in a timely fashion on a proposed license amendment would result in derating or shutdown of a plant. While in isolation this term may be appropriate, its use in this context may result in considerable confusion, especially in light of a recently issued final rule (48FR13966) regarding departures from license conditions or technical specifications in an "emergency" situation.

A member of the NRC Staff has called this potential conflict in terminology to our attention, and we agree that it is desirable to eliminate any potential confusion before it occurs, especially when the public may be asked to provide comments via a toll-free hotline or in response to newspaper articles describing a power plant "emergency". In this forum, the term "emergency" carries with it a connotation not accurate when describing license amendments which warrant expedited treatment. Frequently the situations which arise have very little nuclear safety significance but the wording of the technical specifications is such that a plant shutdown would be necessary within a matter of hours or days unless an amendment is issued promptly.

Use of the term "emergency" in the context of the final rule (48FR13966) is more appropriate from our perspective. The stated purpose of that rule is to allow licensees to take reasonable action that departs from a license condition or technical specification when such action is immediately needed to protect the public health and safety. While we are hopeful that such situations would rarely if ever arise, the situations contemplated are authentic emergencies which have some safety significance. The rule correctly recognizes that not all plant conditions can be anticipated in the license and technical specifications, and provisions have been taken to allow departures.

In light of the above, we propose that the term "emergency" be reserved exclusively for use in the context of 48FR13966, and that alternate wording be developed for use in the interim final rule. For instance, the initial portions of 10CFR50.91(a)(5) could be reworded as follows:

> "Where the Commission finds that plant conditions exist warranting expedited treatment of a proposed license amendment, in that failure ....."

Other provisions of the interim final rules which currently use the word "emergency" could similarly be reworded. We believe this recommendation will eliminate both an unnecessary source of concern for the public and potential confusion with the provisions of 10CFR50.54(x) and 50.72(c).

Use of Media to Obtain Public Comment

In the Supplementary Information section of the interim final rule on Notice and State Consultation, the NRC describes various means of obtaining public comment under exigent circumstances. Two options specifically mentioned

include use of a local newspaper to inform residents of proposed amendments, and use of a toll-free hotline to facilitate receipt of public comment.

We are hard pressed to envision circumstances under which these measures will truly enhance nuclear safety. It is far more likely that such actions will serve to unnecessarily alarm the public. Routine power plant evolutions, which in some cases result in the need for prompt processing of license amendments, are not appropriate subjects for newspaper articles and toll-free hotlines. They imply a sense of urgency and significance which, with respect to impact on the public health and safety, is simply not there. Our concerns regarding media exposure are not conjecture or speculation, but are based on our experience including a New York Times article on the Pressurized Thermal Shock issue for one of our plants, and on adverse and unjustified media exposure regarding the Interim Reliability Evaluation Program for another of our units. We refer you to our letters to H. R. Denton and Chairman Palladino[2] for additional details on these issues.

In response to our letter to Chairman Palladino, Mr. Dircks invited us[3] to provide additional suggestions on how to more effectively deal with the issue of media use of nuclear power plant data and information. In response to that invitation and to the concerns raised by the interim final rules, we offer two recommendations.

First, use of the media to provide information on nuclear power plant operations is a delicate matter which must be carefully administered. The perspectives of the public are markedly different from those directly associated with nuclear power regulation, and these differences must be recognized in preparing media releases. In the interest of optimizing this public comment process, we recommend that the NRC consult with the licensees on a proposed release before action is taken. Licensees would have a greater degree of familiarity with both the issue at hand and with local media personnel. The NRC would of course retain the final authority in the event of an impasse, but licensee input should be solicited. This measure would also improve the ability of licensees to respond to media inquiries by allowing more time for licensees to prepare information and to ensure the availability of knowledgable personnel.

Second, we recommend that all inputs provided by the States and the public to the NRC be made available to licensees. Copies of all correspondence should be

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(2) The referenced documents are:

- o W. G. Counsil letter to H. R. Denton dated, October 23, 1981, Pressurized Thermal Shock of Reactor Vessels.
- o W. G. Counsil letter to N. J. Palladino dated February 16, 1983, Interim Reliability Evaluation Program.

(3) W. J. Dircks letter to W. G. Counsil dated April 11, 1983, Interim Reliability Evaluation Program.

forwarded promptly to licensees. If a hotline is established, all conversations should be taped and copies be provided to licensees. Such measures are appropriate because it is the licensees who are responsible for public health and safety, and any potentially relevant input should promptly be made available to licensees. Further, licensees invest substantial resources in public information programs and these inputs could be used to assess their effectiveness and identify potential areas of improvement. We remain dedicated to the safety of nuclear power plant operations, and we are willing to provide information to the States or the public to demonstrate our corporate commitment. We are in a better position to respond to the public's questions and comments, and should be provided all inputs provided to NRC under these circumstances.

Implications of NRC's Regionalization Plans

In 48FR12619, the NRC noticed a summary of its plans regarding regionalization of selected licensing functions. The issue which has attracted the most attention during the regional meetings and in other forums is the regionalization of certain power reactor licensing functions, with a resulting division of licensing responsibilities between NRC headquarters and the Regional Offices. We believe that such a step may prove beneficial, provided a reasonable concensus is reached regarding which functions are regionalized and which are retained at headquarters. We fully recognize that final decisions have not been reached and therefore NRC's current regionalization plans have no immediate impact on the interim final rules. However, we wish to ensure a smooth transition and believe some advance planning will facilitate the process. This matter was addressed briefly in previous correspondence(4); further clarification is provided here.

Most of the discussions we have participated in suggest that the delineation of responsibilities will be issue-oriented. Implicit in this approach is the fact that review and issuance of license amendments would also be shared. The "routine" amendments would be processed by the Regions and the "complex" amendments would be dispositioned by headquarters. Certain internal NRC memoranda(5) appear to support this type of approach. If this situation materializes without further guidance, licensees would be unsure where to direct license amendments requiring expedited treatment since by definition the plant situation would not have been previously contemplated. Given the extensive amounts of telephone contact normally associated with these situations, we believe it is desirable that communications with the responsible NRC Office be initiated from the beginning. Hence, we recommend that before any transfer of authority of facility licenses occurs, a clear understanding of the groundrules for the transfer is reached. We are confident that a mutually acceptable approach can be defined in the context of finalizing the details of the entire regionalization process.

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(4) W. G. Counsil letter to D. G. Eisenhut dated, March 24, 1983, Comments on Draft NUREG-0737 PWR Technical Specifications.

(5) J. G. Keppler memorandum to H. R. Denton dated, January 13, 1982, Regionalization of NRR Functions.
H. R. Denton memorandum to V. Stello dated February 5, 1982, Regionalization of Regulatory Functions.

Further, independent of where licensee amendments are evaluated, it is necessary that thorough and precise procedures be in place to provide a road map for the NRC Staff on the steps to be taken to promptly process a license amendment request(6). Before the NRC can establish the optimum method of regionalizing this function, it now must address the new elements of Federal Register notice coordination, public comment review, State consultation, and coping with exigent circumstances. We merely wish to avoid a situation where the Regional Offices have the responsibility of dealing with a proposal requiring prompt attention, and working level personnel are unfamiliar with any of the steps necessary to process the request. In summary, we believe that the interim final rules introduce new considerations into the evaluation of regionalizing authority to issue license amendments. These and other factors should be considered by both the NRC and the industry before a decision is reached.

No Significant Hazards Consideration - Reracking of Spent Fuel Pools

We strongly support the Commission's decision to not include reracking in the list of examples that will be considered likely to involve a significant hazard consideration.(7) It is clearly inappropriate to publish a policy which ignores and runs contrary to the documented technical NRC conclusions published in numerous Safety Evaluation Reports. A decision to classify all reracking as actions constituting significant hazards considerations, applied to certain realistic scenarios, would yield some rather bizarre conclusions. For example, a licensee operating several facilities may have previously reracked a spent fuel pool and have therefore received a Staff SER containing the typical findings such as:

- The new racks do not alter the potential consequences of the design basis accident for the spent fuel pool, and

- The new racks will not change the radiological consequences of a postulated fuel handling accident or spent fuel caskdrop.

The same licensee may now wish to expand its spent fuel storage capacity at a sister unit using an identical design, and the Commission would find a "significant hazard" associated with a previously explicitly approved and successfully implemented design if this example was reinstated. In short, nuclear safety decisions should be reached using technical input. Significantly, adopting our recommendation would send an appropriate and interpretable signal regarding the meaning of the criteria associated with making the no significant hazards consideration determination on issues not explicitly covered in the examples.

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(6) Specific recommendations in this regard were provided in the W. G. Counsil letter to D. G. Eisenhut dated April 25, 1983, Public Law 97-415.

(7) The basis for our support was summarized in the W. G. Counsil letter to Chairman Palladino dated, February 9, 1983, Significant Hazards Considerations.

Amendments Requiring Expedited Treatment and Involving a Significant Hazards Consideration

The Commission's interim final rules identify the procedural differences between amendments involving a significant hazards consideration from those which do not. Where conditions warrant and the amendment does not involve a significant hazards consideration, there is a process available to have amendments issued on an expedited basis. However, there is no process identified to disposition amendment requests which both require expedited treatment and involve a significant hazards consideration. While we recognize that it is unlikely for such a situation to arise, it is nonetheless conceivable. The scenario takes on additional credibility when one hypothesizes a situation where ample lead time was provided, a hearing was convened, and protracted administrative delays consumed all the time originally allocated to secure regulatory approval. In these or other circumstances delaying issuance of an amendment could even run contrary to the interests of overall plant safety.

While various organizations may have differing views in the probability of such a scenario, prudence dictates that some mechanism be established to deal with this situation. One possibility would be Commission issuance of an immediately effective Order (10CFR2.204). We would welcome the opportunity to discuss this matter further with the NRC.

Treatment of Exemptions from NRC Regulations

The subject interim final rules contain no explicit reference to exemptions[8] from NRC regulations which are issued. However, we are concerned that the various methods the Commission has used to issue exemptions may result in unjustifiably complicating their disposition by subjecting all such future requests to this new OL amendment process. It is our view that exemption requests need not automatically be considered license amendments, even though the NRC has occasionally elected to notice such actions in the Federal Register and/or assign license amendment numbers to the issuing documents. Support for our position can be found from both the technical and legal perspectives.

From a technical standpoint, many exemptions which licensees are obligated to seek are the direct result of poorly worded or inappropriate regulations. Far fewer exemptions would be needed if the NRC was more sensitive to industry perspectives in its rulemaking proceedings. The most blatant example of this trend are NRC's fire protection regulations, 10CFR50.48 and Appendix R to 10CFR50. The regulated industry has already submitted hundreds of exemption requests from these regulations, and the unfortunate truth is that thousands may be dispositioned before the issue is resolved. The word exemption carries with it a connotation to the layman of a reduction in the protection of public health and

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(8) Requests for relief from NRC regulations generally filed pursuant to 10CFR50.12, or other provisions of limited applicability such as 10CFR50.48(c)(6).

safety. Of course, this is not the case. In fact, the criteria for submitting under 50.48(c)(6) are that implementation of NRC requirements would not enhance fire protection safety or may be detrimental to overall facility safety. Such issues should not, as a matter of standard practice, be elevated to the status of license amendments.

From a legal standpoint, ample precedent has been set in that there have been numerous instances in the past of the NRC issuing exemptions and not assigning license amendment numbers to the issuing documents(9). The precedent has already been firmly established and the interim final rules do not disturb this practice. Adoption of this recommendation would yield no conflict with any existing NRC regulation.

Support from our position can also be found in 10CFR170.22, schedule of fees for facility license amendments. This paragraph describes the current six classes of amendments, and identifies the required fee for review. The description for Classes III through VI contain the following:

"Amendments, exemptions, or required approvals ....."

The above wording indicates that amendments and exemptions are distinct actions, and that exemptions should not automatically be considered license amendments. In addition, the NRC has issued at least one clarification letter(10) on Part 170 in which further support for this position can be found.

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(9) Examples of this approach include the following:

D. M. Crutchfield letter to W. G. Counsil dated, April 21, 1983. Exemption related to the Annual Emergency Preparedness Exercise, Millstone Station, Units No. 1 and 2.

D. M. Crutchfield letter to W. G. Counsil dated, December 21, 1982. Inservice Inspection Relief, Reactor Coolant Pump Inspection Program, Haddam Neck Plant.

H. R. Denton letter to W. G. Counsil dated, November 11, 1981. Fire Protection Exemption, Haddam Neck Plant and Millstone Station, Unit No. 2.

(10) A July 12, 1979 letter from W. O. Miller to W. G. Counsil provided guidance for interpreting the requirements of Part 170. Enclosure No. 7 of that document makes it explicitly clear that review of proposed amendments are separate and distinct from reviews of exemption requests, even when only one safety issue is involved.

To consider all exemptions as amendments would merely add more administrative hurdles, paperwork, and time delays to an already sufficiently cumbersome process. More importantly, it would add nothing to nuclear safety. In several recent instances the NRC has either acted or proposed to act in a fashion suggesting that the need for exemptions will continue to escalate. On the issue of prompt notification systems, the NRC established a deadline knowing with virtual certainty that several licensees would be incapable of complying. In the proposed rule on shift staffing (47FR38135), the NRC described how licensees could merely seek exemptions if they could not meet the proposed deadline. Appendix E to 10CFR50 requires annual emergency planning exercises, even though the lead governmental agency on this issue, FEMA, believes a lesser frequency is adequate. Often the annual frequency cannot be met because FEMA, the States, the local communities, other involved agencies cannot support that schedule.(11) Even when the licensee is not responsible for the deferral, the licensee is obligated to seek and justify the exemption. We believe that no additional obstacles should be erected in the exemption process, and we urge the NRC to let nuclear safety considerations play a paramount role in reaching a decision in this regard.

Relationship to Proposed Rule on Technical Specifications for Nuclear Power Reactors

In 47FR13369, the NRC proposed to amend existing regulations governing Technical Specifications by introducing a bi-level system of Technical Specifications and Supplemental Specifications. Only the former would be made directly a part of the operating license, and any changes would continue to require prior NRC approval. According to the explanation provided in the Federal Register notice, the Supplemental Specifications can be changed by the licensee within certain bounds and under prescribed conditions. A process similar to plant changes made under 50.59 is envisioned.

The major difficulty we forsee when looking at this process in the context of the interim final rules concerns proposed 10CFR50.36(f)(7). Even though the Supplemental Specifications would not be a part of the license, there are conditions (described in 50.36(f)(7)) under which proposed changes must be treated as license amendments and applications must be filed pursuant to 50.90. It is unclear why applications for license amendments must be submitted to change a document which is to be designated not a part of the operating license. There are also implications in proposed 50.54(x)(12) of instances where changes to the Supplemental Specifications may involve license amendments in that "prior Commission approval" is required.

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(11) Additional examples of this trend can be found in the W. G. Counsil letter to the Secretary of the Commission dated, February 2, 1983, Comments on the Proposed Rule Regarding Revision of License Fee Schedules.

(12) Apparently to be re-designated in light of the change issued in 48FR13966, which promulgates a different provision designated as 50.54(x).

While the above questions need to be resolved independent of the interim final rules, they acquire additional significance in light of the new license amendment process. The attractiveness of this proposed rule is diminished if a significant percentage of changes to the provisions which would be included within the Supplemental Specifications have to be processed as amendments, especially in light of these interim final rules. Among the comments we submitted previously(13) on this proposed rule, we suggested that the constraints within which changes could be implemented by the licensee are unnecessarily restrictive. Specific recommendations regarding relaxation of the proposed criteria were also provided.

Question of Retroactivity

The interim final rules become effective on May 6, 1983. In recent conversations with the Staff, we have been verbally informed that the NRC intends to process all amendment requests not issued by May 6, 1983 by following the steps contained in the interim final rules. We find such a position to be totally inappropriate and, in fact, contrary to the rule itself. We believe that all amendment requests docketed by May 6, 1983 should be dispositioned using the conventional (pre-interim final rule) process.

The new 10CFR50.91 contains the following paragraph:

> "The Commission will use the following procedures on an application received after May 6, 1983 requesting an amendment to an operating license ....."

The Supplementary Information Section further clarifies the statement in the rule as follows:

> "Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and not provide notice for public comment on amendments on which the Commission has not acted before the effective date of the interim final rule."

The above explanation is unambiguous and, when coupled with the previously quoted excerpt from the new 50.91, leaves no doubt that pending amendment requests should be processed using the original procedures. No explanation for any other approach has been offered, and we strongly believe that the statements in the rule should be adhered to.

Criteria Used to Make the No Significant Hazards Consideration Determination

The NRC is undoubtedly aware of the strong similarity between the criteria to be used to make the no significant hazards consideration determination with the criteria of 50.59 which define the tests associated with making the unreviewed safety question determination. While we offer no explicit comments on the

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(13) W. G. Counsil letter to the Secretary of the Commission dated, May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.

actual criteria (vs. their interpretation) for making the former determination, the interim final rule has raised an important question regarding the interpretation of the criteria in 50.59.

The most important difference between the two sets of criteria relates to the absence of the word "significant" in either 50.59(a)(2)(i) or 50.59 (a)(2)(iii). When interpreted literally, the absence of the word significant results in an extremely rigid set of criteria which unjustifiably complicates the process of implementing changes to facility design or procedures.

To illustrate this point, the following examples are presented. The legal limit on site boundary dose for a certain accident may be 300 rem. The licensing basis analysis for this event may have a dose consequence of 0.001 rem, many orders of magnitude below the regulatory limit. A design change may result in a doubling of the calculated dose, which constitutes an "increase in the consequences of a previously analyzed accident". This situation could result in a positive unreviewed safety question determination, when in fact this safety significance of the change is trivial. One example of such a change concerns the transition from manual to automatic initiation of auxiliary feedwater systems for PWR's.

Similarly, the probability of a given accident resulting in a core melt may be 10^{-7}, several orders of magnitude below the proposed safety goal. A plant design change may increase this probability by a factor of 2, yet not have any significant impact on the overall probability of core melt for the facility. It is our view that this situation should not result in a positive unreviewed safety question determination, yet a literal interpretation of the currently phrased 50.59 has this effect.

The criteria of 50.59 can be interpreted a number of ways, and our review has revealed that little if any relevant guidance from the NRC exists in this regard. Consequently, we believe that the most appropriate action is to formally amend the first and third criteria as follows:

- If the probability of occurence where the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be <u>significantly</u> increased,

- If the margin of safety as defined in the basis for any technical specification is <u>significantly</u> reduced.

We believe these changes would streamline the process by eliminating ambiguity and reducing the number of positive unreviewed safety question determinations and consequently reducing the volume of paperwork required, yet nuclear safety considerations would not be compromised. These changes would clearly place the responsibility for nuclear safety where it belongs, in the hands of licensees.

We intend to discuss this recommendation with members of the Staff and, if appropriate, file a petition for rulemaking to accomplish this objective.

Looking at the license amendment situation from a more global perspective, it has become eminently clear that far too many license amendments are being processed using increasing complex procedures. Several independent alternatives, or a combination of them, should be pursued to alleviate this situation. One alternative identified above is to relax the criteria governing what constitutes an unreviewed safety question. A second approach is conceptually identified in the proposed rulemaking on Technical Specifications, involving the creation of a bi-level system of specifications. A third alternative would be to establish a system whereby many of the provisions currently contained in the Technical Specifications could be amended by the licensee without explicit prior NRC approval. The common theme behind each of these alternatives is a reduction in the paper pushed to implement plant changes and license amendments with an equivalent or improved assurance of nuclear safety. The objective is to clearly articulate that licensees have the responsibility for plant safety, and the NRC functions in an audit-only role whenever possible. We suggest that these possibilities be explored further to bring the optimum solution to fruition.

Interpretation of Criteria Used to Make the No Signification Hazards Consideration Determination

The pivotal word in three criteria used to make the no significant hazards consideration determination is the word "significant". Obviously this word can connote different meanings to different people. We believe that licensees are best qualified to interpret this term in the context of their own amendment requests, and consequently the Commission should avoid publishing rigid "guidance" documents in this regard. We are currently preparing a guidance document for our use internally, and its purpose will be to ensure company-wide consistency without prescribing a cookbook approach.

For example, it is inappropriate to specify a percentage change above which the change becomes "significant" in all circumstances. When the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant. When the safety margin is fifteen percent, a comparable percentage reduction may in fact be significant. The cummulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

In addition, our guidance document will provide information regarding the "design basis envelope" for our facilities. Our accident probability or consequence determinations will be limited to our design basis requirements and other credible scenarios and not to all hypotheses of third-party reviewers.

Conclusion

We appreciate the opportunity to provide our comments on these interim final rules, and are available to provide further clarification if desired by the Staff.

Very truly yours,

W. G. Counsil

W. G. Counsil
Senior Vice President

PROPOSED RULE PR-50 (18)
(48 FR 14864)

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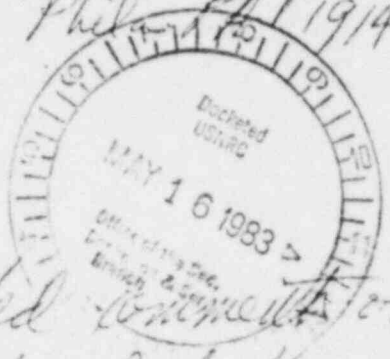

Secretary USNRC
Docketing + Service
Dear Sir Secretary,
Please accept my late filed comments on the "No Significance Hazards Rule".
Although Congress has mandated this rule, the NRC interpretation far exceeds the powers granted by Congress. The interpretation also unduly and improperly limits "Freedom of speech." (1st amendment to the US Constitution.
The Salem incident has shown that very minor changes to operating ~~proposed~~ procedures can have potentially draconian consequences such as an A.T.W.S. The Staff has not been able to fathom the truth that minor changes can lead to severe health and safety consequences.

Marion J. Lewis.

5/18/83 BD

T Dorian

TO RECIPIENTS OF COMMENTS ON PR-50 (48 FR 14864) - STANDARDS FOR DETERMINING WHETHER LICENSE AMENDMENTS INVOLVE NO SIGNIFICANT HAZARDS CONSIDERATIONS

You have received two (2) comments marked No. 18. Please amend the latter from CP&L (S.F. Flynn) to Comment No. 18A.

Docketing and Service Branch
Office of the Secretary of the
Commission

6/13/83

~~8306160245~~

T. Dorian
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NORTHEAST UTILITIES
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April 25, 1983

Docket Nos. 50-213
50-245
50-336
B10763

Mr. D. G. Eisenhut, Director
Division of Licensing
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Haddam Neck Plant
Millstone Nuclear Power Station, Unit Nos. 1 & 2
Public Law 97-415

Gentlemen:

On April 6, 1983, the NRC promulgated two interim final rules in accordance with the requirements of Public Law 97-415. These regulations imposed additional requirements governing preparation and issuance of license amendments. In accordance with the Federal Register Notice associated with these requirements, we intend to provide the detailed comments on or before May 6, 1983. However, we believe that one issue merits considerable attention on the part of you and your Staff at this time, and the purpose of this letter is to bring this matter to your attention.

These new regulations require a determination regarding the no significant hazards consideration on the part of both licensees and the NRC, require interaction with the affected State, and the opportunity for public comment on all proposed amendments. Especially during the initial stages of implementation of these new rules, we perceive that there will be considerable confusion on the part of both the NRC Staff and the States. While this confusion is not a cause for concern regarding amendments of a non-emergency nature, we foresee major difficulties developing concerning amendments which are required to be issued on an expedited basis.

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While there clearly is no substitute for gaining experience with these new procedures, prudence dictates that procedures outlining the steps to be taken by the various Staff members involved should be developed and issued. It is our sincere hope that if the Northeast Utilities organization is in need of an amendment on an expedited basis after May 6, 1983, that our assigned project managers will be familiar with the steps to be taken to insure its issuance in a timely fasion. We see no safety benefit being derived by delaying plant operation because of procedural issues rather than safety issues. We are therefore encouraging the NRC to take steps now to minimize the potential for this situation developing. Such measures would likely include the preparation

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of internal procedures identifying specific additional steps to be taken upon by NRC personnel upon receipt of an amendment request of an emergency or exigent nature.

Very truly yours,

NORTHEAST NUCLEAR ENERGY COMPANY
CONNECTICUT YANKEE ATOMIC POWER COMPANY

W. G. Counsil
W. G. Counsil
Senior Vice President

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May 16, 1983

Mr. Samuel J. Chilk
Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chilk:

Enclosed for the Commission's consideration are the comments of Carolina Power & Light Company (CP&L) on the interim final rules implementing Section 12 of the NRC Authorization Act published at 48 Fed. Reg. 14864 and 14873 on April 6, 1983.

CP&L requested and received an extension of time until Monday, May 16, 1983 within which to file these comments from Mr. Scott Stuckey, Chief, Docketing and Service Branch. CP&L very much appreciates the granting of the extension and the opportunity to submit the enclosed comments.

Sincerely,

Samantha Francis Flynn

Samantha Francis Flynn
Associate General Counsel

SFF/dlt

cc: Thomas F. Dorian, Esquire
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

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CP&L

Carolina Power & Light Company

May 16, 1983

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Comments on Interim Final Rules: Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations; 48 Fed. Reg. 14864; Notice and State Consultation; 48 Fed. Reg. 14873 (April 6, 1983).

Dear Mr. Chilk:

Carolina Power & Light Company (CP&L) appreciates this opportunity to comment on the interim final rules implementing Section 12 of the NRC Authorization Act, Pub. L. No. 97-415, 96 Stat. 2067, published at 48 Fed. Reg. 14864 and 14873 on April 6, 1983.

By letter to Mr. Chilk from the law firm of Debevoise & Liberman dated May 6, 1983, CP&L and several other utilities have submitted fairly extensive comments on these interim regulations. CP&L, acting individually, is submitting these additional comments in order to emphasize certain points it deems to be of particular importance.

I. Notice Procedures

In the Statement of Considerations accompanying the proposed interim regulations regarding notice procedures, the Commission stated that with respect to operating license amendment requests filed prior to May 6, 1983 (the interim rules' effective date) but not yet acted upon by that date, "the Commission proposes to keep its present procedures and not provide notice for public comment." In addition, the first paragraph of proposed §50.91 provides: "the Commission will use the following [new] procedures on an application received after May 6, 1983 requesting an amendment to an operating license."

Many utilities learned informally, only shortly before the effective date of the rules, that the Commission had changed its position and was, in fact, intending to provide notice and opportunity for public comment on such applications.

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411 Fayetteville Street • P. O. Box 1551 • Raleigh, N. C. 27602

This reversal of position obviously places at a serious disadvantage a utility which requires one or more license amendments applied for prior to May 6, 1983 before it may start up from a refueling outage during the months of May and June, 1983. Of course, the amendments typically required for start up after a refueling outage are routine in nature and do not involve significant hazards consideration.

Under these circumstances, and because of the enormous cost to a utility and its customers that every day of down time entails, CP&L believes that such cases should be treated as necessarily involving exigent circumstances which warrant the use of expedited procedures for providing notice and opportunity for comment of the Commission's initial determination of no significant hazards consideration and intent to issue the amendment. That such a situation constitutes exigent circumstances becomes apparent when one balances the substantial costs for replacement power which would be borne by a utility and its customers against the slight inconvenience that potential intervenors might experience because of a need to provide comments within a shorter than usual period of time. The costs of delaying startup in such a situation are particularly unacceptable when one recognizes the routine nature of most amendments of this kind and the unlikelihood, therefore, that a determination of no significant hazards consideration with respect to such amendments would engender or merit significant criticism.

With respect to a related issue, CP&L believes that a thirty day period for receiving public comment on a Commission initial determination of no significant hazards consideration, even in normal circumstances, would create substantial delays in the amendment process without any corresponding increase in the protection of the public health and safety. For these reasons, CP&L requests the Commission to adopt the shorter notice and comment periods suggested in the utility group's comments filed on May 6, 1983.

Whatever time period the Commission ultimately adopts for opportunity for comment in normal circumstances, CP&L believes that it is necessary to recognize that exigent circumstances may arise subsequent to the publication of a Commission notice offering the normal period of time for public comment on an initial determination of no significant hazards consideration. The interim regulations should be modified to make clear that the Commission may, in such circumstances, establish an expedited schedule for receiving public comment and issuing the amendment.

II. Standards Concerning Determination of no Significant Hazards Consideration.

In the Statement of Consideration accompanying the interim regulations regarding standards governing determinations of no significant hazards considerations, the Commission provided several examples of Amendment requests not likely to be deemed to involve significant hazards considerations.

As currently written, example (viii) provides that an amendment to reflect minor adjustments in ownership shares of co-owners already shown on the license as owners would not be likely to involve significant hazards considerations. CP&L believes that, similarly, there are not likely to be significant hazards considerations when an amendment is sought to add new co-owners to an operating license so long as the electric utility designated in the existing license as the operator of the reactor will retain exclusive responsibility for its operation and control.

CP&L requests, therefore, that example (viii) be amended to include such a situation.

Thank you for your consideration of these comments.

Respectfully submitted,

Walter J. Hurford

Walter J. Hurford
Manager - Technical Services

WJH/dlt

PROPOSED RULE PR-50 (19)
(48FR 14864)

DOCKETED

14 May 1983
718-A Iredell
Durham NC 27705

Secretary USNRC Washington DC 20555
Attn Docketing and Service '83 MAY 20 A10:36
RM 10 CFR 50 no significant hazards consideration

Please consider these comments if it is practical to do so.

NRC's proposal is so vague and open to interpretation that it is very difficult to comment on. This is not what Congress ordered when it said NRC should draw a clear distinction between license amendments involving significant hazards and those with no significant hazards. Congress also said borderline cases would be treated as significant hazards, and that the rules should be able to be applied "with ease and certainty". Public Law 97-415 and accompanying legislative history at p. 37.

In refusing to consider spent fuel re-racking and significant increases in amounts of effluents or radiation emitted by nuclear plants, the Commission shows a fundamental disregard for the intent of Congress. In refusing to list areas that definitely involve significant hazards, NRC ignores both the borderline case inclusions intent of Congress, and a basic principle of educational psychology, which is that to make a distinction between groups of items clear, examples of what is and is not included are very helpful.

Obviously the sufficiency of compensating measures for a change in plant tech specs that affects operability or numbers of available safety systems should be included. Reductions in testing, surveillance, QA/QC inspection, redundancy, or monitoring requirements should be included as at least borderline (and therefore eligible for hearing) significant hazards considerations.

The term "significant" as used in examples needs to be defined.

The staff studies alleging to quantify probabilities of allpossible accidents are silly. What you need is simply to identify the license amendments where the change makes an accident possible or more possible. That is a significant hazard. Further work should be reserved for (1) approval of the amendment if no hearing is requested, or (2) testimony at hearing.

NRC's past rubber-stamp approach to license amendments, without public notice and without hearings in virtually all cases, is what Congress has ordered changed. Only those amendments involving no significant hazards are to be exempted from hearing, by law. NRC does not have the authority to go against this intent of Congress.

At the same time NRC is concluding that spent fuel "reracking technology is well developed and demonstrated", I&E is notifying licensees of new problems with it. This clearly makes re-racking a borderline case. The chance of fuel handling accidents and accidental criticality make spent fuel handling of any form a potential significant hazard anyway -- able to release radioactive material in unplanned ways. Loss of coolant in spent fuel pools can happen faster with reracking (more fuel there, less water) (less circulation too). Finally, reracking has been confirmed as a significant hazard in the record before Congress (127 Cong. Record at H 8156; Senate Report. 97-113 at 15). NRC is trying to go against the clear understanding of the Congress in enacting this law for no significant hazards considerations, by deleting re-racking. This undermines confidence in NRC's honesty or competence or both. Best to delimit no-hazard narrowly & use that.

DS10
Add Thomas J. Dreese
Tech/MTB

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DOCKET NUMBER
PROPOSED RULE PR-50 (8)
(48FR14864)

May 6, 1983

DOCKET NUMBER
PROPOSED RULE PR-2,50 (9)
(48FR14926)

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Significant Hazards and Temporary Operating License Rulemakings (48 F.R. 14864-80, 14926-33, April 6, 1983).

Dear Mr. Chilk:

The Atomic Industrial Forum appreciates the opportunity to comment on the Commission's Federal Register notices of April 6, 1983, concerning implementation of Public Law 97-415. Our comments have been prepared in consultation with a number of members of the AIF Lawyers Committee. In general, we support these proposals with the caution noted below.

Procedures for Notice and State Consultation

These interim final rules implement Public Law 97-415 with respect to the procedures for Commission decisions on amendments to operating licenses. The Commission has noted that the vast majority of these amendments are routine in nature and that approximately 98% of its past amendment actions have involved no significant hazards considerations. (SECY-83-16A, Regulatory Analysis, p.4).

As a result of these interim rules, no action will be taken on any operating license amendment (except in an emergency or exigent situation) until the staff has made a proposed determination and a 30-day comment period expires. (See new Section 50.91(a)(2)). While the content of these rules and their complexity appear to be generally consistent with the statute, we are concerned about the potential for delay, a potential which

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Acknowledged by card 5/13/83
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the Commission has already recognized.* We urge the Commission to manage the notice and consultation process so as to minimize the potential for unnecessary delays in granting license amendments.

Temporary Operating Licenses (TOLs)

These proposed rules implement that portion of Public Law 97-415 which authorizes the Commission to issue a temporary operating license (fuel loading, low-power operation and testing) prior to the completion of a contested operating license hearing. We support the Commission's effort to "de-formalize" its licensing proceedings by not applying the ex parte rule to TOLs. We believe that sound decisionmaking on complex technical issues requires that the Commission have direct access to the expertise of its staff, and in this regard the ex parte rule acts as a barrier to such access. We expect to file more detailed comments on this issue in response to the future rulemaking actions resulting from the work of the Commission's Regulatory Reform Task Force.

Thank you for the opportunity to provide these comments.

Very truly yours,

Bailey Z Lowry

BZC:hsr

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*"Under the new rule, all preliminary determinations would require some evaluation to serve as the basis for the notice which advises the public of our proposed determination. Experience (in earlier years) with the preparation and approval process for such determinations has shown that they can be both difficult to prepare and time-consuming, requiring both management and legal review." (SECY-83-16A, Regulatory Analysis, p.4).

NEW YORK
STATE ENERGY OFFICE
ROCKEFELLER PLAZA
ALBANY, NEW YORK 12223
WILLIAM D. COTTER, ACTING COMMISSIONER

PR-50 (20)
(48 FR 14864)

May 16, 1983

Dear Mr. Secretary:

The Agencies of the State of New York have reviewed the proposed amendments to 10 CFR Parts 2 and 50 on significant hazards considerations and on State notice and consultation. We support the adoption of these proposals with consideration given to the comments presented below. The flexibility given to the NRC under these regulations should prevent unnecessary shutdowns or deratings of nuclear power plants while still protecting the public health and safety.

The new requirement for a nuclear power reactor licensee to formally and directly notify the State in which the reactor is located that the operator is requesting an amendment to their license at last recognizes the important and potential impacts on State resources of such large nuclear operations. The regulations give the State no more authority in regulating the operation of the reactor than it had in the past, but they serve notice on the reactor operator that the State is an interested party in all nuclear operations within the State.

We are concerned with the free use of the word "significant." There is no definition of what this means and its interpretation will be quite different by different groups. Even many of the examples used to demonstrate it use the same term and hence do not serve to clarify the intent. While it is very difficult to be precise in these matters, this lack may lead to court challenges in cases where opponents believe something is significant and NRC believes it's insignificant. We suggest that there should be some mechanism for resolving disputes between staff, the State, or other parties over whether there is or is not a significant hazard consideration.

We also believe the State and public should be able to have a say where a change has an environmental impact. While the regulation says that the "Commission will be particularly sensitive" to such impacts, it does not provide for any State or public input on them prior to issuance of the amendment.

Thank you for the opportunity to comment on these regulations.

Cordially,

William D. Cotter
Acting Commissioner

WDC/JDD/ds

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTN: Docketing and Service Branch

AA61-2 PDR

T. Dorian
9604

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

May 6, 1983

ALL DL EMPLOYEES

DL OPERATING PROCEDURE 228

REVISED PROCEDURES FOR PROCESSING LICENSE AMENDMENTS FOR POWER REACTORS AND TESTING FACILITIES (THE "SHOLLY" LEGISLATION) - NO SIGNIFICANT HAZARDS CONSIDERATION, NOTICING AND STATE CONSULTATION

I. Applicability

This procedure applies to amendments to operating licenses for power reactors and testing facilities.

II. Effective Date

These procedures must be applied to amendment requests dated May 6, 1983 and thereafter.

Amendment requests dated prior to this date will be noticed under these new procedures; however, unless in specific circumstances it has been deemed desirable to request licensees to submit their analyses about no significant hazards considerations, they will not be required to submit such analyses. Also, licensees need not send a copy to the State. This should be done by the project manager.

III. Background

Public Law 97-415 (signed January 4, 1983) amended section 189, "Hearings and Judicial Review," of the Atomic Energy Act of 1954, as amended (the Act). The origin of the legislation is adequately explained in Attachments 1 and 2 (copies of Federal Register notices of two NRC interim final rules, both effective as of May 6, 1983).

The exact text of the amendment to section 189 of the Act is presented on page 10 of Attachment 1.

In summary, the legislation applies to license amendments involving no significant hazards considerations. It authorizes NRC to issue and make immediately effective any amendment to an operating license upon a determination by NRC that such an amendment involves no significant hazards consideration. The amendment may be issued and made effective even if a hearing has been requested. If a hearing is held, it would be held after the amendment is issued.

CONTACT:
C. Trammell
49-27389

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The legislation also requires NRC to:

- o Publish a notice in the Federal Register at least every thirty days listing all amendments issued or proposed to be issued under the "no significant hazards consideration" authority.

- o Publish regulations within 90 days establishing:

  (a) standards for determining whether an amendment to an operating license involves no significant hazards consideration, and

  (b) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any "no significant hazards consideration" determination, which criteria shall take into account the exigency of the need for the amendment involved, and

  (c) procedures for consultation on any such determination with the State in which the facility is located.

The authority to issue (and make immediately effective) amendments to operating licenses involving no significant hazards consideration takes effect when NRC has published effective regulations implementing the above. The interim final rules shown in Attachments 1 and 2 are the required regulations. As explained before, these are effective on May 6, 1983. Therefore, the "Sholly" authority also takes effect on this date.

IV. Discussion

The implementing regulations involve substantial revisions to our procedures for processing license amendment requests. State consultation, notice of amendment requests for public comment about no significant hazards considerations, notice of all amendment requests for a hearing, and the monthly system of Federal Register notices are all new aspects of the new regulations. Our current procedures for making a determination as to no significant hazards consideration are also substantially revised.

An abbreviated flow chart is presented in Attachment 3 which shows the various paths an amendment request can take depending on the circumstances. This is discussed in detail in the procedure which follows. The flow chart is an integral part of this procedure.

Since this DLOP is based on the attached interim final rules which have also been published for a 30-day public comment period, it is possible that further changes in these rules will be made. This, in turn, may require revision to these procedures.

The actual interim final rules appear in Attachment 1, pp. 28-34, and Attachment 2, pp. 33-36. These rules and the Supplementary Information for each will be referred to throughout this procedure. For brevity, "NSHC" will be used for no significant hazards considerations; "SHC" will be used for significant hazards consideration.

V. General

This section contains a general discussion of the procedures for (1) determinations as to NSHC, (b) the monthly system of Federal Register notices, and (c) State consultation. The specific application of each of these elements is shown in the flow diagram (Attachment 3) and the detailed procedures which are presented in the next section (VI).

The flow diagram and associated elements of this procedure show the mechanical, procedural steps leading to issuance of an amendment. Such issuance is, of course, not automatic, and is dependent upon acceptable safety, environmental, or anti-trust findings in accordance with normal review procedures established elsewhere. The amendment actually issued may be substantially different from that requested, or the amendment request may be denied. If denied, a notice of denial is required where a notice of receipt has previously been published. See 10 CFR 2.108(b). This step is not shown on Attachment 3 nor explicitly described under the noticing procedures described below.

1. No Significant Hazards Consideration Determination

(a) This determination is based on the standards contained in new 50.92 quoted below (50.92(a) is not new, but is the old 50.91):

§50.92 Issuance of amendment.

(a) In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued prior to the issuance of the amendment to the license. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action pursuant to §2.105 of this chapter before acting thereon. The notice will be issued as soon as practicable after the application has been docketed.

(b) The Commission will be particularly sensitive to a license amendment request that involves irreversible consequences (such as one that, for example, permits a significant increase in the amount of effluents or radiation emitted by a nuclear power plant).

(c) The Commission may make a final determination, pursuant to the procedures in §50.91, that a proposed amendment to an operating license for a facility licensed under §50.21(b) or §50.22 or for a testing facility involves no significant hazards considerations, if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
(3) Involve a significant reduction in a margin of safety.

A full discussion of these standards is contained in Attachment 2.

(b) Standards 50.92(c)(1) and (3) are essentially identical to those used by DL for years. Standard 50.92(c)(2) was procedurely adopted by DL on June 1, 1982. Therefore, none of these standards is new, except that they are now regulations.

(c) 50.92(b) states that NRC will be particularly sensitive to a license amendment request that involves irreversible consequences. The intent here is to be sensitive to such issues in deciding the NSHC issue. This is but one of the factors to be considered in reaching a conclusion. An amendment authorizing action which is irreversible does not necessarily involve a SHC. A more complete discussion of the intent of this provision is presented in Attachment 2, pp. 25-27, for guidance. Note that 50.92(b) contains an example of an amendment involving irreversible consequences.

(d) To assist the staff in making both proposed and final NSHC determinations, Attachment 2 (pp. 27-30) contains a list of examples of amendments that are likely - and not likely - to involve SHC. These examples are incorporated herein by reference and are to be used by the staff. These examples supplement the standards and should simplify the NSHC determination in cases where an amendment request matches an example. In such a case, the identification of a "match" will normally serve to decide the NSHC issue. The only basis needed is to demonstrate that a match exists.

However, since these lists are only examples of amendments likely to involve - or not involve - NSHC, there may be unusual, specific circumstances surrounding an amendment request which dictate a conclusion opposite to that shown by the examples. In such cases, the basis for this conclusion should be fully described.

The standards in 50.92 always govern. In almost all cases, however, the examples shown will fit the standards for a specific amendment request. If an amendment request fits none of the examples, NSHC will be determined solely by the standards.

Most of these examples are essentially identical to those used for years. Some of the examples of amendments that are considered likely to involve SHC (Attachment 2, p. 28) have been changed as follows:

- Example (iii). "A significant relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety (such as allowing a plant to operate at full power during a period in which one or more safety systems are not operable)."

The underlined parenthetical phrase has been added. See Attachment 2, pp. 25-26, for additional discussion of this item. This is an example of an amendment which involves irreversible consequences, discussed in (c) above.

- Example (vii). "A change in plant operation designed to improve safety but which, due to other factors, in fact allows plant operation with safety margins significantly reduced from those believed to have been present when the license was issued."

This is a new example of an amendment that is likely to involve SHC. See Attachment 2, p. 18-19 for more discussion of this example.

- o Reracking of Spent Fuel Pools. Determinations as to NSHC for reracking spent fuel pools will be made on a case-by-case basis, giving full consideration to the technical circumstances of the case, using the standards of 50.92. This is an interim policy in effect until further notice. The Commission has directed the staff to prepare a report on this subject by August 1, 1983. Changes to the above policy may be made following Commission review of the report. See Attachment 2, pp. 23-24, and additional Commissioners' comments at the end of Attachment 2 for further discussion of this subject.

(e) Formal written proposed determinations of NSHC or SHC determinations are now required for each amendment request.

(f) Final NSHC determinations are not required when a full 30-day notice of opportunity for hearing has been offered and no request for a hearing has been received.* See 50.91(a)(3).

2. Noticing Procedures

Noticing procedures have been substantially revised. The monthly system of Federal Register notices (described below) is new. There are also several new types of notices. The specific application of these procedures is shown in the detailed procedure in Section VI.

(a) The Monthly System of Federal Register Notices

This is established by a revision to section 189 of the Act (see Attachment 1, p. 10, para. 2(B)). It requires the NRC to publish in the Federal Register (every thirty days) notice of all amendments issued or proposed to be issued (for the period) for which either a proposed or final determination has been made that the amendment involves NSHC. Most Notices of Issuance will be included

*The situation may arise in which a late request for hearing is received after the 30-day notice period but before the issuance of the amendment. In such a situation, a final NSHS determination is required.

in this monthly system. Separate, individual notices of issuance will not normally be necessary, unless time is a factor.

The monthly system will also include notices for opportunity for hearing and public comment on proposed NSHC determinations in cases where time is not a factor. It is also used for a notice for opportunity for hearing and notice of issuance and notice of NSHC in any unusual case where there was no time for a full 30-day notice of opportunity for a hearing before issuance and we have determined that the amendment request involves NSHC. These new notices are explained below.

The monthly system is not used for amendments involving SHC. Separate, individual notices of opportunity for hearing and notices of issuance are used for these, consistent with past practice.

The monthly FR notice contains 5 distinct types of notices. See Attachment 7 for a description of these types.

(b) Amendments Involving Significant Hazards Considerations

If an amendment has been determined to involve a SHC, an individual notice of opportunity for hearing (30-days) is published, and the amendment must not be issued until the expiration of the notice period. If a hearing is requested and granted, no amendment may be issued until authorized at the conclusion of the hearing process. The SHC determination is final. No public comments as to the determination are requested or required, no State consultation is required (discussed later), and such notices and amendments are excluded from the monthly system of Federal Register notices.

(c) Amendment Requests Involving No Significant Hazards Considerations

For amendment requests other than (b) above, the NRC makes a proposed determination of NSHC. Such proposed determinations are normally published for public comment in the Federal Register. In the same notice, an opportunity for hearing (30-days) is offered. The notice may appear in the monthly system or as an individual notice. If an individual notice is used (due to time contraints), it must appear again in the next monthly notice because the monthly notice must list all amendments involving a proposed NSHC determination.

(d) Emergency or Exigent Situations

In valid exigent or emergency circumstances, the prior notice in (c) above is not issued; however, a post-notice is issued.

(1) An emergency situation exists when failure to act in a timely way would result in derating or shutdown of a nuclear power plant. See 50.91(a)(5). In this case, the NRC proceeds to make a final NSHC. If the final determination is NSHC, the amendment is issued. The notice would go into the monthly system as a combined notice of issuance, notice of opportunity for hearing, and notice of NSHC determination. (The SE should address any State comments received regarding NSHC.)

(2) Exigent circumstances exist when a licensee and the NRC must act quickly and time does not allow a full 30-day notice described in (c) above. In this case, a press release is used in lieu of the Federal Register notice. The press release seeks public comment as to the proposed NSHC determination, but does not offer an opportunity for hearing. The noticing procedures are the same as in (d)(1) above. (The SE should address any public or State comments received.)

(e) Amendment requests (involving proposed NSHC) which have been fully noticed for 30 days for both a hearing and comments as to NSHC, and for which no hearing has been requested, will be noticed in the monthly system after issuance. Comments received as to NSHC need no response since no hearing was requested. See §50.91(a)(3).

(f) Amendment requests (involving NSHC) which have been noticed for 30 days for both a hearing and comments as to NSHC and for which a hearing has been requested will require a final NSHC finding. If the original proposed NSHC determination is confirmed, the amendment is issued and an individual notice of issuance and notice of NSHC is also issued. The purpose of an individual notice is to notify the ASLB and parties promptly without waiting for the next monthly FR notice. This notice must, however, be repeated in the next monthly notice since the monthly notice will contain a list of all amendments issued involving NSHC.

3. State Consultation

(a) The revision to section 189 of the Act requires NRC to consult with the State in which the facility is located in determining whether an amendment involves NSHC. It also requires NRC to publish regulations establishing procedures for such consultation.

(b) These regulations are presented in Attachment 1, pp. 33 (50.91(b) and (c)). They are straightforward and are not repeated here.

(c) State consultation is not required for proposed amendments for which NRC makes an initial (final) finding that SHC is involved.

(d) To establish lines of communication for State consultation, the Office of State Programs has notified each State governor of these procedures and identified the NRC project manager for each power reactor and testing facility in each State. NRR has issued Generic Letter 83-19 to each licensee notifying it of the appropriate State official designated to receive a copy of each amendment request. Finally, each project manager has been notified of the designated State contact by receiving a copy of the generic letter.

(e) Project Managers should exercise these new communication lines prior to actual need.

VI. Detailed Procedure

The procedural steps and details which follow are based on the Flow Diagram of Attachment 3. Paragraph numbers below correspond to identically numbered boxes on Attachment 3.

1. Application for Amendment

(a) When a licensee (power reactor or testing facility) applies for an amendment to its operating license, it must now provide to NRC its analysis about the issue of no significant hazards consideration. See 50.91(a)(1). The purpose of this analysis is to assist the staff in its determination.

(b) The licensee must provide a copy of its application to the State in which the facility is located, including its analysis about the issue of NSHC. The application must indicate that this has been done. See 50.91(b)(1). This is the first step in State consultation, discussed later.

(c) If an emergency situation exists such that failure of NRC to act on the amendment request in a timely way would result in derating or shutdown of the facility, the amendment request must also explain why this emergency situation occurred and why the licensee could not avoid this situation. See 50.91(a)(5). This information will be evaluated and, if valid, certain noticing procedures may be bypassed (discussed later) and the amendment issued more rapidly provided the amendment has been determined to involve NSHC.

(d) If exigent circumstances exist, short of an emergency, where a licensee and NRC must act quickly such that time does not allow NRC to follow its normal noticing procedures (discussed later), the application should include an explanation about the reason for the exigency and why the licensee cannot avoid it. See 50.91(a)(6). Similar to (c) above, this information will be evaluated by NRC to see if abbreviated noticing procedures are justified (discussed later). Again the amendment can be issued more rapidly, provided that the amendment involves NSHC.

2. Initial No Significant Hazards Consideration Determination

(a) Upon receipt of an amendment application, the first step is to make a determination as to NSHC. Attachment 4 is provided for that purpose; it documents the determination, its basis, and the approvals. It should be retained by the project manager, and a copy placed in the branch file.

(b) The NSHC determination is made based on the standards, examples and guidance contained in Section V above (para. 1). The licensee's discussion of NSHC should also be reviewed. If found to be a sound assessment, its conclusions may be adopted. If the licensee's NSHC discussion is not accepted, the same conclusion may be reached for different reasons. Alternatively, an opposite conclusion may be reached.

(c) The Initial Notice Action (SHC)

If a conclusion is reached that an amendment request involves SHC, that decision is a final determination. A 30-day notice of opportunity for a prior hearing is required. See Attachment 5 for an example of such a notice. The rest of the steps after the issuance of such a notice is shown in Attachment 3 (top-right) and is self-explanatory. A sample individual notice of issuance is shown in Attachment 6.

3. The Initial Notice Action (Proposed NSHC)

(a) In addition to the initial notice in para. 2(c) immediately above, there are five other possible types of initial noticing actions (all five are those for which a proposed NSHC determination has been made). These are:

- input to monthly FR notice
- individual FR notice (2 sources)
- local media notice (press release)
- no notice at all

These are shown in the flow diagram (Attachment 3) and are described below. They are also shown in Attachment 4.

(b) If time is not a factor, such that the initial notice can be placed in the monthly system of FR notices without impacting needed schedules, that should be done. Most amendment requests are in this category. See Attachment 7 for a sample monthly FR notice and see Attachment 8 for sample input to the monthly FR notice system for this notice type. Attachment 8 is a memorandum, Branch Chief to Branch Chief, with the needed input elements. The input, when placed in the monthly FR notice, becomes a notice of opportunity for hearing (not necessarily a prior hearing) combined with a notice of the proposed NSHC determination and request for public comments as to this proposed determination (30 days).

(c) If time is a factor such that time does not allow waiting for the next monthly FR notice, or it is otherwise undesirable (work schedules, etc.) to wait, an individual notice (same notice content as (b) above) is issued (Attachment 9a).

Project managers should allow 40 calendar days* from the date the Branch Chief signs the notice until expiration of the notice period (full 30 days) in figuring the date the amendment can be issued with full 30 days notice. If this period of time (40 days) does not allow a full 30 days before the amendment is actually needed, an exigent or emergency circumstance may exist (discussed below). See Section V, para. 2(d) for definitions. Though the notice period is closed 30 days after publication, the individual notice is repeated for completeness in the monthly FR notice (Attachment 7). Sample input is shown in Attachment 9b.

(d) If a valid exigent circumstance exists, a press release is used instead. The validity of the exigency is evaluated on Attachment 4. Attachment 10, which should be sent by telecopy, is a sample press release and memorandum requesting its release to the press by the Regional Public Affairs Officer. Normally, the time interval from signature by the Branch Chief until the close of the the comment period should be 15 calendar days or more. In unusual cases, it can be less. However, since it takes five calendar days for the announcement to be printed, the interval should not be shortened below 10 calendar days. Comments are received from the public via collect telephone call to the appropriate Branch Chief. The Branch Chief must document such calls, since comments are later evaluated (discussed later). A copy of the press release is also sent to the State for consultation purposes.

An advance copy of the application is sent to the LPDR.

(e) The content of the notices and press release above should be reasonably calculated to allow the public an opportunity to formulate and submit reasoned comments.

In this regard, the description of the amendment must explain not only its effect (as in past practice) but the gist of the license or technical specification changes

*Based on a sample of 46 FR notices, the average time from signature of Branch Chief to publication is 8.8 calendar days. Ten days exceeds this sample average only slightly. The statistical upper tolerance limit for 90%/90% is 16 days; the 95%/95% tolerance limit is 18 days (this means that if you allow 18 days, you are 95% confident that 95% of notices will be published in 18 days). This period can be reduced substantially by personal handling. The minimum time would be seven days in this case.

involved as well. The following is an example of the type of detail required (reload application):

"The amendment would permit operation with new X brand fuel containing aluminium clad fuel elements in addition to the Y brand fuel with stainless steel cladding used during cycle Z. This requires numerical changes in the safety limit on peak clad temperature and in numerous limiting conditions for operation including peak heat generation rate, peaking factor and reactivity insertion rates because of the different chemical and neutronic characteristics of the clad material. The amendment is supported by a change in computation methods for departure from nucleate boiling ratio (DNBR) which also requires certain changes in technical specifications to change how heat-transfer-related limiting conditions for operation including _____ are measured and computed".

In addition, the notice must explain the basis for the proposed determination of no significant hazards consideration. The basis statement should refer to the examples contained in the Supplementary Information of the rule (Attachment 1, pp. 27-30). For a reload, a decision such as that set forth below should be presented:

"The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14871). One of the examples of actions involving no significant hazards considerations relates to reload amendments involving no fuel assemblies significantly different than those previously found acceptable at the facility in question. While the fuel assemblies involved in this application are significantly different in clad composition from those previously reviewed for this facility, nevertheless, the staff proposes to determine that the application does not involve a significant hazard since _____ (reason taken from Attachment 4, Initial NSHC Determination and Noticing Action form)".

(f) If a valid emergency exists and time does not allow a press release, no prior notice of any type is issued.

(g) If the emergency or exigent circumstances stated by the licensee are determined to be invalid (as documented on Attachment 4), an individual notice of opportunity for hearing and request for public comments as to the proposed NSHC determination (Attachment 9a) is issued and repeated in the next monthly FR notice (Attachment 9b). The expedited features of para. (d) and (e) above are not used. See 50.91(a)(5) and (6). The licensee receives a letter of explanation and a copy of the individual notice.

4. Action Following 30-Day Notice of Opportunity for Hearing and Comments as to Proposed NSHC Determination

(a) If the 30-day notice period has expired with no hearing requested, the amendment may be issued.* The notice of issuance appears in the monthly FR notice (Attachment 7). A sample input for the monthly FR notice is shown in Attachment 11. Since no hearing was requested, no final NSHC determination is made. Where appropriate, the notice also states that comments were received. (No response to comments is necessary in the absence of a hearing request.)

(b) If a hearing has been requested, a final NSHC must be made. This determination must consider and evaluate any State or public comments received. The final determination will establish whether the hearing will be held before or after issuance of any amendment. This final determination is documented on Attachment 12.

(c) If the final determination is NSHC, the amendment may be issued. The SE should address comments received regarding NSHC and the final determination, using the information in Attachment 12. Since petitioners and the ASLB are waiting for this decision, an individual notice of issuance and notice of final NSHC determination (Attachment 13) is issued (copy to ASLB, to parties or petitioners; and to State). The information contained in this notice must also appear in the next monthly FRN (Attachment 7). Branch Chief input for the monthly FRC is shown in Attachment 14.

*The situation may arise in which a late request for hearing is received after the 30-day notice period but before the issuance of the amendment. In such a situation, a final NSHS determination is required.

(d) If the outcome of the final NSHC determination is that SHC is involved, any hearing held would take place before any issuance of an amendment. The final determination (based on Attachment 12) is sent to the Licensing Board, parties or petitioners, and the State. Following any hearing, any amendment issued would be noticed in the FR with an individual notice of issuance along the lines of Attachment 6, but tailored to the specific circumstances of the proceeding.

5. Action in the Event of Exigent or Emergency Circumstances

(a) In this case, no opportunity for a hearing has been offered, but there may have been State comments and perhaps public comments on the proposed NSHC determination. Therefore, a final NSHC determination (Attachment 12) is required.

(b) If the final determination is that SHC is involved, a full 30-day notice of opportunity for a prior hearing is published, and the procedures of para. 2(c) above followed.

(c) If the proposed NSHC determination is affirmed as final, the amendment may be issued. The SE should address any comments received regarding NSHC and the final determination, using the information in Attachment 12. The issuance is published in the monthly Federal Register notice as a combined notice of issuance, notice of opportunity for hearing (a post-hearing), and notice of final NSHC determination (Attachment 7). Sample Branch Chief input for the monthly Federal Register Notice is shown in Attachment 15.

VII. Coordination

1. Until further notice, the responsibility for issuing the monthly FR notices will be rotated between branches, in the following sequence:

Branch	Date Monthly FR Notice to be signed by Branch Chief		
ORB-3	May 24, 1983	June 14, 1983	July 12, 1983
ORB-4	August 16, 1983	September 13, 1983	October 18, 1983
ORB-5	November 15, 1983	December 13, 1983	January 17, 1984
ORB-1	February 14, 1984	March 13, 1984	April 17, 1984
ORB-2	May 15, 1984	June 12, 1984	July 17, 1984
LB-2	August 14, 1984	September 18, 1984	October 16, 1984
LB-3	November 13, 1984	December 18, 1984	

These dates are designed to normally allow publication on the following Wednesday.

OELD concurrence for the monthly FR Notice is not required, since it has concurred with this procedure and each individual noticing action on Attachment 4.

Branch Chief inputs to the monthly FR notice system will be accepted up to the last working day before the scheduled date for signature (COB, Monday).

2. Two months before the scheduled issuance of a new operating license to a power reactor or testing facility, the responsible Branch Chief shall notify the Office of State Programs. The purpose of the notification is to ensure that the State is advised of State consultation procedures and associated contacts (project manager and State official).

Darrell G. Eisenhut, Director
Division of Licensing

Attachments:
See next page

Attachments

1. Interim Final Rule - Notice and State Consultation

2. Interim Final Rule - Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations

3. Flow Diagram - State Consultation, Noticing and No Significant Hazards Consideration Procedures

4. Initial No Significant Hazards Consideration Determination and Noticing Action (Form)

5. Sample Individual FR Notice of Opportunity for Prior Hearing

6. Sample Individual Notice of Issuance of Amendment

7. Sample Monthly FR Notice

8. Sample Memorandum Requesting Input into Monthly FR Notice

9a. Sample Individual FR Notice of Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

9b. Sample Memorandum Requesting Input into Monthly FR Notice

10. Sample Memorandum to Regional Public Affairs Officer and Press Release

11. Sample Memorandum Requesting Input into Monthly FR Notice

12. Final NSHC Determination (Form)

13. Sample Individual Notice of Issuance of Amendment and Final Determination of NSHC

14. Sample Memorandaum Requesting Input into Monthly FR Notice

15. Sample Memorandum Requesting Input into Monthly FR Notice

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 C.F.R. Parts 2 and 50

Notice and State Consultation

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations (1) to provide procedures under which normally it would give prior notice of opportunity for a hearing on applications it receives to amend operating licenses for nuclear power reactors and testing facilities (research reactors are not covered) and prior notice and reasonable opportunity for public comment on proposed determinations about whether these amendments involve no significant hazards considerations, (2) to specify criteria for dispensing with such prior notice and reasonable opportunity for public comment in emergency situations, and (3) to furnish procedures for consultation on any such determinations with the State in which the facility involved is located. These procedures will normally provide the public and the States with prior notice of NRC's determinations involving no significant hazards considerations and with an opportunity to comment on its actions.

EFFECTIVE DATE: The Commission invites comments on this interim final rule by MAY 6 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received on the amendments as well as on the Regulatory Analysis proposed in connection with the amendments may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

Public Law 97-415, signed on January 4, 1983, among other things, directs NRC to promulgate regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards

consideration, (b) criteria for providing or, in emergency situations, dispensing with prior notice and public comment on any such determination, and (c) procedures for consulting on such a determination with the State in which the facility involved is located. See Conf. Rep. No. 97-884, 97th Cong., 2d Sess. (1982). The legislation also authorizes NRC to issue and make immediately effective an amendment to a license, upon a determination that the amendment involves no significant hazards consideration (even though NRC has before it a request for a hearing by an interested person) and in advance of the holding and completion of any required hearing. This rulemaking and request for comments responds to the statutory directive that NRC expeditiously promulgate regulations on items (b) and (c) above. NRC is also publishing separately in the FEDERAL REGISTER interim final regulations on item (a) above.

These regulations are issued, as final though in interim form, and comments will be considered on them. They will become effective 30 days after publication in the FEDERAL REGISTER. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time, but not later than 30 days after publication, to permit the fullest consideration of their views.

BACKGROUND

A. Affected Legislation, Regulations and Procedures

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public hearing on issuance of a

construction permit or operating license for a nuclear power reactor in the absence of a request from an interested person. In 1957, the Act was amended to require that mandatory hearings be held before issuance of both a construction permit and an operating license for power reactors and certain other facilities. Public Law 85-256 (71 Stat. 576) amending section 189a. of the Act.

The 1957 amendments to the Act were interpreted by the Commission as requiring a "mandatory hearing" before issuance of amendments to construction permits and operating licenses. See, e.g., Hearing Before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2d. Sess. (April 17, 1962), at 6.) Partially in response to the administrative rigidity and cumbersome procedures which this interpretation forced upon the Commission (see, Joint Committee on Atomic Energy Staff Study, "Improving the AEC Regulatory Process", March 1961, pp. 49-50), section 189a. of the Act was amended in 1962 to eliminate the requirement for a mandatory public hearing except upon the application for a construction permit for a power or testing facility. As stated in the report of the Joint Committee on Atomic Energy which recommended the amendments:

> Accordingly, this section will eliminate the requirements for a mandatory hearing, except upon the application for a construction permit for a power or testing facility. Under this plan, the issuance of amendments to such construction permits, and the issuance of operating licenses and amendments to such construction permits, and the issuance of operating licenses and amendments to operating licenses, would be only after a 30-day public notice and an offer of hearing. In the absence of a request for a hearing, issuance of an amendment to a construction permit, or issuance of

> an operating license, or an amendment to an operating license, would be possible without formal proceedings, but on the public record. It will also be possible for the Commission to dispense with the 30-day notice requirement where the application presents no significant hazards consideration. This criterion is presently being applied by the Commission under the terms of AEC Regulations 50.59. House Report No. 1966, 87th Cong., 2d. Sess., p. 8.

Thus, according to the 1962 amendments, a mandatory public hearing would no longer be required before issuance of an amendment to a construction permit or operating license and a thirty-day prior public notice would be required only if the proposed amendment involved a "significant hazards consideration." In sum, section 189a. of the Act, now provides that, upon thirty-days' notice published in the FEDERAL REGISTER, the Commission may issue an operating license, or an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act, or for a testing facility licensed under section 104c., without a public hearing if no hearing is requested by any interested person. Section 189a. also permits the Commission to dispense with such thirty-days' notice and FEDERAL REGISTER publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. These provisions have been incorporated into §§ 2.105, 2.106, 50.58(a) and (b) and 50.91 of the Commission's regulations.

The regulations provide for prior notice of a "proposed action" on an application for an amendment when a determination is made that there is

a significant hazards consideration and provide an opportunity for interested members of the public to request a hearing. See §§ 2.105(a)(3) and 50.91. Hence, if a requested license amendment is found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing is completed or after expiration of the notice period. In addition, § 50.58(b) further explains the Commission's hearing and notice procedures, as follows:

> 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.

The Commission's practice with regard to license amendments involving no significant hazards consideration (unless, as a matter of discretion, prior notice was given) was to issue the amendment and then publish in the FEDERAL REGISTER a "notice of issuance." See § 2.106. In such a case, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for a hearing did not, by itself, suspend the effectiveness of the amendment. Thus, both the notice and hearing, if one were requested, occurred after the amendment was issued.

It is important to bear in mind that there is no intrinsic safety significance to the "no significant hazards consideration" standard. Whether or not an action requires prior notice, no license and no amendment may be issued unless the Commission concludes that it provides reasonable assurance that the public health and safety will not be endangered and that the action will not be inimical to the common defense and security or to the health and safety of the public. See, e.g., § 50.57(a). Also, whether or not an amendment entails prior notice, no amendment to any license may be issued unless it conforms to all applicable Commission safety standards. Thus, the "no significant hazards consideration" standard has been a procedural standard only, governing whether public notice of a proposed action must be provided, before the action is taken by the Commission. In short, the "no significant hazards consideration" standard has been a notice standard and has had no substantive safety significance, other than that attributable to the process of prior notice to the public and reasonable opportunity for a hearing.

B. The Sholly Decision and the New Legislation

The Commission's practice of not providing an opportunity for a prior hearing on a license amendment not involving significant hazards considerations was held to be improper in Sholly v. NRC, 651 F.2d 780 (1980), rehearing denied, 651 F.2d 792 (1980), cert. granted 101 S.Ct. 3004 (1981) (Sholly). In that case the U.S. Court of Appeals for the District of Columbia Circuit ruled that, under section 189a. of the Act,

NRC must hold a prior hearing before an amendment to an operating license for a nuclear power plant can become effective, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior notice in the FEDERAL REGISTER. At the request of the Commission and the Department of Justice, the Supreme Court agreed to review the Court of Appeals' interpretation of section 189a. of the Act. The Supreme Court has remanded the case to the Court of Appeals with instructions to vacate it if it is moot and, if it is not, to reconsider it in light of the new legislation.

The Court of Appeals' decision did not involve and has no effect upon the Commission's authority to order immediately effective amendments, without prior notice or hearing, when the public health, safety, or interest so requires. See, Administrative Procedure Act, § 9(b), 5 U.S.C. § 558(c), section 161 of the Atomic Energy Act, and 10 C.F.R. §§ 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements, which are designed to enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a. -- that is, whether the person has demonstrated standing and identified one or more issues to be litigated. See, BPI v. Atomic Energy Commission, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not

unreasonable for the Commission to require that the prospective intervenor first specify the basis for his request for a hearing."

However, the Commission believed that legislation was needed to change the result reached by the Court in Sholly because of the implications of the requirement that the Commission grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. The Commission believes that, since most requested license amendments involving no significant hazards consideration are routine in nature, hearings on such amendments could result in disruption or delay in the operations of nuclear power plants and could impose regulatory burdens upon it and the nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S.912) that would expressly authorize it to issue a license amendment before holding a hearing requested by an interested person, when it has made a determination that no significant hazards consideration is involved in the amendment.

After the House and Senate conferees considered two similar bills, H.R.2330 and S.1207, they agreed on a unified version (see Conf. Rep. No. 97-884, 97th Cong. 2d. Sess. (1982)) and passed Public Law 97-415. Specifically, section 12(a) of that law amends section 189a. of the Act by adding the following with respect to license amendments involving no significant hazards considerations:

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

Section 12(b) of that law specifies that:

(b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to an operating license upon a determination that the amendment involves no significant hazards consideration, even though NRC has before it a request for a hearing from

an interested person. At the same time, however, the legislative history makes it clear that Congress expects NRC to exercise its authority only in the case of amendments not involving significant safety questions.

The Conference Report states:

> The conference agreement maintains the requirement of the current section 189a. of the Atomic Energy Act that a hearing on the license amendment be held upon the request of any person whose interest may be affected. The agreement simply authorizes the Commission, in those cases where the amendment involved poses no significant hazards consideration, to issue the license amendment and allow it to take effect before this hearing is held or completed. The conferees intend that the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration. Id., at 37.

In this regard, the Senate stressed:

> its strong desire to preserve for the public a meaningful right to participate in decisions regarding the commercial use of nuclear power. Thus, the provision does not dispense with the requirement for a hearing, and the NRC, if requested [by an interested person], must conduct a hearing after the license amendment takes effect. See S. Rep. No. 97-113, 97th Cong., 1st Sess., at 14 (1981).

The public notice provision was explained by the Conference Report as follows:

> The conferees note that the purpose of requiring prior notice and an opportunity for public comment before a license amendment may take effect, as provided in subsection (2)(C)(ii) for all but emergency situations, is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues. While this subsection of the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment, the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments.

> The requirement in subsection 2(C)(ii) that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the conferees' intent that, wherever practicable, the Commission should publish prior notice of, and provide for prior public comment on, such a proposed determination.
>
> In the context of subsection (2)(C)(ii), the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor . . . The Commission's regulations should insure that the "Emergency situations" exception under section 12 of the conference agreement will not apply if the licensee has failed to apply for the license amendment in a timely fashion. In other words, the licensee should not be able to take advantage of the emergency itself. To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 38 (1982).

C. Notice for Public Comment and for Opportunity for a Hearing.

The Commission has decided to adopt the notice procedures and criteria contemplated by the legislation with respect to determinations about no significant hazards consideration. In addition it has decided to combine the notices for public comment on no significant hazards considerations with the notices for opportunity for a hearing, thereby, normally providing both prior notice of opportunity for a hearing and prior notice for public comment of requests it receives to amend operating licenses of facilities described in § 50.21(b) or § 50.22 or of testing facilities.

With respect to opportunity for a hearing, the Commission would amend § 2.105 to specify that it could normally issue in the FEDERAL REGISTER at least monthly a list of "notices of proposed actions" on requests for

amendments to operating licenses. These monthly notices would provide an opportunity to request a hearing within thirty days. The Commission would also retain the option of issuing individual notices, as it sees fit. If the Commission does not receive any request for a hearing on an amendment within the notice period, it would take the proposed action when it has completed its review and made the necessary findings. If it receives such a request, it would act under a new § 50.91, which describes the procedures and criteria the Commission would use to act on applications for amendments to operating licenses involving no significant hazards considerations. (The interim final rule on "Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations," published separately in the FEDERAL REGISTER, redesignated the present § 50.91 as § 50.92.)

To implement the main theme of the legislation, under new § 50.91 the Commission would combine a notice of opportunity for a hearing with a notice for public comment on any proposed determination on no significant hazards consideration. Additionally, new § 50.91 would permit the Commission to make an amendment immediately effective in advance of the holding and completion of any required hearing where it has determined that no significant hazards consideration is involved. Thus, § 50.91 would build upon amended § 2.105, providing details for the system of FEDERAL REGISTER notices. For instance, exceptions would be made for emergency situations, where no prior notices (for opportunity for a hearing and for public comment) might be issued, assuming no significant hazards considerations are involved. In sum, this system would add a "notice for public comment" under § 50.91 to the present system of "notice

of proposed action" under § 2.105 and "notice of issuance" under § 2.106. Under this new system, the Commission would require an applicant requesting an amendment to its operating license (1) to provide its appraisal on the issue of significant hazards, using the standards in § 50.92 and the examples discussed in the separate FEDERAL REGISTER notice, and (2), if it involves the emergency or exigency provisions, to address the features on which the Commission must make its findings. (Both points will be discussed later.)

When the Commission receives the amendment request, as described below, it would first decide whether there is an emergency or an exigency. If there is no emergency, it would then make a preliminary decision, called a "proposed determination," about whether the amendment involves no significant hazards consideration -- normally, this would be done before completion of the safety analysis (also called safety evaluation). In this determination, it might accept the applicant's appraisal in whole or in part or it might reject the applicant's appraisal but, nonetheless, reach the same conclusion.

At this stage, if the Commission decides that no significant hazards consideratic is involved, it could issue an individual FEDERAL REGISTER notice or list this amendment in its monthly publication in the FEDERAL REGISTER. This monthly publication would not only list amendment requests received for which the Commission is publishing notice under § 2.105, it would also provide a reasonable opportunity for public comment by listing this and all amendment requests received since the last such monthly notice, and, like an individual notice, (a) providing a brief description of the amendment

and of the facility involved, (b) noting the proposed no significant hazards consideration determination, (c) soliciting public comment on the determination, and (d) providing for a 30-day comment period.

While it is awaiting public comment, the Commission would proceed with the safety analysis. In this context, the Commission wishes to note that, though the substance of the public comments could be litigated in a hearing, when one is held, neither it nor its Boards will entertain hearing requests on its actions with respect to these comments. It believes that this is in keeping with the legislation which states that public comment cannot delay the effective date of an amendment.

After the public comment period, the Commission would review the comments, consider the safety analysis, and reach its final decision on the amendment request. If it decides that no significant hazards consideration is involved, it would publish an individual "notice of issuance" under § 2.106 or publish the notice of issuance in its system of monthly FEDERAL REGISTER notices, and thus close the public record. Note that the Commisison would not make and publish a final determination on no significant hazards consideration because such a determination is needed only if a hearing request is received and the Commission decides to make the amendment immediately effective and to provide a hearing after issuance rather than before.

If it receives a hearing request during the comment period and the Commission has decided that no significant hazards consideration is involved, it would prepare a "final determination" on that issue, make the requisite safety and public health findings, and proceed to issue the amendment. The hearing request would be treated the same way as in previous Commission practice, that is, by providing any requisite hearing after the amendment has been issued. As explained before, the legislation permits the Commission to make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person (even one that meets the provisions for intervention in § 2.714), in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved. The Commission wishes to state in this regard that any question about its staff's determinations on the issue of significant versus no significant hazards consideration that may be raised in any hearing on the amendment will not stay the effective date of the amendment.

The Commission believes that the procedure just described would be its usual way of handling license amendments, because most of these do not involve emergency or exigent situations and do not entail a determination that significant hazards consideration is involved. These three situations and other unusual ones could arise though.

Returning to the initial receipt of an application, if the Commission receives an amendment request and then determines that a significant hazards

consideration is involved, it would handle this request in the same way it does now, by issuing an individual notice of proposed action and providing an opportunity for a hearing under § 2.105. The only change in its present procedure would be that it could notify the public of the final disposition of the amendment by noting its issuance or denial in the monthly FEDERAL REGISTER notice instead of in an individual notice.

Another possibility might be that the Commission receives an amendment request and finds an emergency situation, where failure to act in a timely way would result in derating or shutdown of a nuclear power plant. In this case, also discussed later in connection with State consultation, it may proceed to issue the license amendment, if it determines, among other things, that no significant hazards consideration is involved. In this circumstance, the Commission might not necessarily be able to provide for prior notice for opportunity for a hearing or for prior notice for public comment and might therefore use its present procedure, publishing an individual notice of issuance under § 2.106 (which provides an opportunity for a hearing after the amendment is issued.) Additionally, the Commission's monthly FEDERAL REGISTER notice system would note the Commission's action on the amendment request and, thereby, provide an opportunity for public comment. In connection with emergency requests, the Commission expects its licensees to apply for license amendments in a timely fashion. It will decline to dispense with notice and comment on the no significant hazards consideration determination, if it determines that the applicant has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the

emergency provision. Whenever a threatened closure or derating is involved, the Commission expects the applicant to explain to it why this emergency situation has occurred and why the applicant could not avoid it; the Commission will assess the applicant's reasons for failure to file an application sufficiently in advance of that event.

Still another possibility might be that the Commission receives an amendment request and finds an exigency, that is, a situation other than an emergency where swift action is necessary. The legislation, quoted above, states that the Commission should establish criteria which "take into account the exigency of the need for the amendment." The Conference Report, quoted above, points out that "the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment" and that "the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments."

The Commission believes that extraordinay situations may arise, short of an emergency, where a licensee and the Commission must act quickly and where time does not permit the Commission to publish a FEDERAL REGISTER notice soliciting public comment or to provide 30 days ordinarily allowed for public comment. For instance, such a circumstance may arise where a licensee, while shutdown for a short time, wishes to add some component clearly more reliable than one presently installed or wishes to use a different method of testing some system

and that method is clearly better than one provided for in its Technical Specifications. In either case, the licensee may have to request an amendment, and, if the Commission determines, among other things, that no significant hazards consideration is involved, it may wish to grant the request before the licensee starts the plant up and the opportunity to improve the plant is lost.

In circumstances such as the two just described, the Commisison may use media other than the FEDERAL REGISTER, for example, a local newspaper published near the licensee's facility, widely read by the residents in the area surrounding the facility, to inform the public of the licensee's amendment request. In these instances, the Commission will provide the public a reasonable opportunity to comment on the proposed no significant hazards determination. To ensure that the comments are received on time, the Commission may also set up in such a situation a toll-free hotline, allowing the public to telephone their comments to NRC on the amendment request. It should be noted that this method of prior notice for public comment will be in addition to the routine notice of the amendment in the monthly FEDERAL REGISTER compilation or to any individual notice of hearing that may be published; it will not affect the time available to exercise one's opportunity to request a hearing, though it may provide that opportunity only after the amendment has been issued, when the Commission has determined that no significant hazards consideration is involved.

The Commission will use these procedures sparingly and wants to make sure that its licensees will not take advantage of these procedures. Therefore, it will use criteria, somewhat similar to the ones it will use with respect to emergency situations, to decide whether it will shorten the comment period and change the type of notice normally provided. Consequently, in connection with requests indicating an exigency, the Commission expects its licensees to apply for license amendments in a timely fashion. It will not change its normal notice and public comment practices where it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of the exigency provision. Whenever a licensee wants to use this provision, it will have to explain to the Commission the reason for the exigency and why the licensee cannot avoid it; the Commission will assess the licensee's reasons for failure to file an application sufficiently in advance of its proposed action or for its inability to take the action at some later time.

Another different circumstance may also present itself to the Commission. For instance, it could receive an amendment request with respect to which it finds that it is in the public interest to offer an opportunity for a prior hearing. In this case, it would use its present individual notice procedure and notify the public about the final disposition of the amendment in a notice of issuance or denial in its monthly FEDERAL REGISTER notice, instead of in an individual notice.

It should also be noted that these procedures only apply to license applications. The Commission may, under existing §§ 2.202(f) and 2.204, make a determination that the public health, safety, or interest requires it to order an amendment without prior notice for public comment or opportunity for a hearing. In this case, the Commission would follow its present procedure and publish an individual notice of issuance in the FEDERAL REGISTER and provide for an opportunity for a hearing on the order.

This new system would change only the Commission's noticing practices; it would not alter the Commission's hearing practices. The Commission has attempted to provide noticing procedures that are administratively simple, involve the least cost, do not entail undue delay, and allow a reasonable opportunity for public comment; nevertheless, they are quite burdensome and involve significant resource impacts and timing delays for the Commission and for licensees requesting amendments. Licensees would be able to reduce these delays, under the proposed procedures, by providing to the Commission their appraisals on the issue of significant hazards. There might also be other ways to make the noticing procedures simpler and to assure that the opportunity for public comment is not curtailed. The Commission is therefore particularly interested in comments addressing the workability of its proposed noticing procedures.

Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and

not provide notice for public comment on amendments requested on which the Commission has not acted before the effective date of the interim final rule.

D. State Consultation

As noted above, Public Law 97-415 requires the Commission to consult with the State in which the facility involved is located and to promulgate regulations which prescribe procedures for such consultation on a determination that an amendment to an operating license involves no significant hazards consideration. The Conference Report, cited earlier, stated that the conferees expect that the procedures for State consultation would include the following elements:

> (1) The State would be notified of a licensee's request for an amendment;
> (2) The State would be advised of the NRC's evaluation of the amendment request;
> (3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;
> (4) The NRC would listen to and consider any comments provided by the State official designated to consult with the NRC; and
> (5) The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment.

At the same time, however, the procedures for State consultation would not:

> (1) Give the State a right to veto the proposed NRC determination;
> (2) Give the State a right to a hearing on the NRC determination before the amendment becomes effective;
> (3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or
> (4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

> In requiring the NRC to exercise good faith in consulting with a State in determining whether a license amendment involves no significant hazards consideration, the conferees recognize that a very limited number of truly exceptional cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible State official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down or derating of a power plant. Id., at 39.

The Commission believes that the law and its legislative history are quite specific. Accordingly, it proposes to adopt the elements described in the Conference Report quoted above in those cases where it makes a proposed determination on no significant hazards consideration. Normally, the State consultation procedures would work as follows. To make the State consultation process simpler and speedier, the Commission would require an applicant requesting an amendment to send a copy of its appraisal on the question of no significant hazards to the State in which the facility involved is located. (The NRC is compiling a list of State officials who have been designated to consult with it on amendment requests involving no significant hazards considerations; it intends to make this list available to all its licensees with facilities covered by § 50.21(b) or § 50.22 or with testing facilities.)

The Commission would send its FEDERAL REGISTER notice, or other notice in case of exigent circumstances, containing its proposed determination to the State official designated to consult with it together with a request to that person to contact the Commission if there is any disagreement or concern about its proposed determination. If it does not hear from the State in a

timely manner, it will consider that the State has no interest in its determination -- in this regard, the Commission intends to make available to the designated State officials a list of its Project Managers and other personnel whom it has designated to consult with these officials -- but, nevertheless, before it issues the amendment, it will telephone the appropriate State official for the purpose of consultation.

In an emergency situation, the Commission would do its best to consult with the State, before it makes a final determination about no significant hazards consideration, by simply telephoning the appropriate State official before it issues an amendment.

Finally, the Commission wishes to note two points in connection with the legislative history. First, though the Commission intends to give careful consideration to the comments provided to it by the affected State on the question of no significant hazards consideration, the State comments are advisory to the Commission; the Commission remains responsible for making the final administrative decision on the question. Second, State consultation does not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Paperwork Reduction Act Statement

This rule contains a new reporting requirement which the Office of Management and Budget approved under OMB No. 3150-0011 for the Commission's use through April 30, 1985.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and testing facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on these amendments, assessing the costs and benefits and resource impacts. It may be examined at the address indicated above.

General notice of proposed rulemaking is not required for this interim final rule because the amendments by their nature concern rules of agency procedure and practice. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to 10 C.F.R. Parts 2 and 50 are published as a document subject to codification.

List of Subjects in 10 C.F.R. Parts 2 and 50.

Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

PART 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239) Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5.U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Sections 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended. (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.105, paragraphs (a)(4) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(9), a new paragraph (a)(4) is added, and redesignated paragraph (a)(6) is revised, as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(4) An amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility, as follows:

(i) If the Commission determines under § 50.58 that the amendment involves no significant hazards consideration, though it will provide notice of opportunity for a hearing pursuant to this section, it may make the amendment immediately effective and grant a hearing thereafter; or

(ii) If the Commission determines under § 50.58 and § 50.91 that an emergency or exigent situation exists and that the amendment involves no significant hazards considerations, it will provide notice of opportunity for a hearing pursuant to § 2.106 (if a hearing is requested, it will be held after issuance of the amendment);

* * * * *

(6) An amendment to a license specified in paragraph (a)(5) of this section, or an amendment to a construction authorization granted in proceedings on an application for such a license, wh[illegible] such amendment would authorize actions which may significantly affect the health and safety of the public; or

* * * * *

PART 50 -- DOMESTIC LICENSING OF
PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 is revised to read as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 U.S.C. 955 (42 U.S.C 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. A new §50.91 is added to Part 50 to read as follows:

§50.91 Notice for public comment; State consultation.

The Commission will use the following procedures on an application received after MAY 6 1983 requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility:

(a) Notice for public comment.

(1) At the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in § 50.92, about the issue of no significant hazards consideration.

(2) The Commission may publish in the FEDERAL REGISTER under § 2.105 either an individual notice of proposed action as to which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, a monthly notice of proposed actions which identifies each amendment issued and each amendment proposed to be issued since the last such monthly notice. For each amendment proposed to be issued, either notice will (i) contain the staff's proposed determination, under the standards in § 50.92, (ii) provide a brief description of the amendment and of the facility involved, (iii) solicit public comments on the proposed determination, and (iv) provide for a 30-day comment period. Normally, the amendment will not be granted until after this comment period expires.

(3) The Commission may inform the public about the final disposition of an amendment request where it has made a proposed determination on no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 or by publishing such a notice in its monthly system of FEDERAL REGISTER notices. In either event, it will not make and

publish a final determination on no significant hazards consideration, unless it receives a request for a hearing on that amendment request.

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective upon issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.714 has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved.

(5) Where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. In such a circumstance, the Commission will not publish a notice of proposed determination on no significant hazards consideration, but will publish a notice of issuance under § 2.106, providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in a timely fashion. It will decline to dispense with notice and comment on the determination of no significant hazards consideration, if it determines that the licensee has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision. Whenever a threatened closure or derating is involved, a licensee requesting an amendment must explain why this emergency situation

occurred and why it could not avoid this situation, and the Commission will assess the licensee's reasons for failure to file an application sufficiently in advance of that event.

(6) Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a FEDERAL REGISTER notice allowing 30 days for prior public comment, it will:

(i) Use local media to inform the public in the area surrounding a licensee's facility of the licensee's amendment request and of its proposed determination as described in paragraph (a)(2) of this section;

(ii) Provide for a reasonable opportunity for the public to comment, using its best efforts to make available to the public whatever means of communication it can for the public to respond quickly;

(iii) Publish a notice of issuance under § 2.106, providing an opportunity for a hearing and for public comment after issuance, if it determines that the amendment involves no significant hazards consideration.

(iv) Require an explanation from the licensee about the reason for the exigency and why the licensee cannot avoid it, and use its normal public notice and comment procedures in paragraph (a)(2) of this section where it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of this procedure.

(b) State consultation.

(1) At the time a licensee requests an amendment, it must notify the State in which its facility is located of its request by providing to that State a copy of its application and its analysis about no significant hazards consideration and indicate on the application that it has done so. (The Commission will make available to the licensee the name of the appropriate State official designated to receive such amendments.)

(2) The Commission will advise the State of its proposed determination about no significant hazards consideration normally by sending it a copy of the FEDERAL REGISTER notice.

(3) The Commission will make available to the State official designated to consult with it about its proposed determination the names of the Project Manager or other NRC personnel it designated to consult with the State. The Commission will consider any comments of that State official. If it does not hear from the State in a timely manner, it will consider that the State has no interest in its determination; nonetheless, before it issues the amendment it will telephone that official for the purpose of consultation.

(4) The Commission will make a good faith attempt to consult with the State before it issues a license amendment involving no significant hazards consideration. If, however, it does not have time to use its normal consultation procedures because of an emergency situation, it will attempt to telephone the appropriate State official. Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration, if the Commission deems it necessary to avoid a shutdown or derating.

(5) After the Commission issues the requested amendment, it will send a copy of its final determination to the State.

(c) Caveats about State consultation.

The State consultation procedures in paragraph (b) of this section do not give the State a right:

(1) To veto the Commission's proposed determination;

(2) To a hearing on the determination before the amendment becomes effective; or

(3) To insist upon a postponement of the determination or upon issuance of the amendment;

(4) Nor do these procedures alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Dated at Washington, D.C. this 4th day of April, 1983.

For the Nuclear Regulatory Commission,

Samuel J. Chilk
Secretary for the Commission

Attachment 2
DLOP 228

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 C.F.R. Part 50

Standards for Determining Whether License Amendments

Involve No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations to specify standards for determining whether requested amendments to operating licenses for certain nuclear power reactors and testing facilities involve no significant hazards considerations. These standards will help NRC in its evaluations of these requests. Research reactors are not covered. However, the Commission is reviewing the extent to which and the way such standards should be applied to research reactors.

EFFECTIVE DATE: MAY 6 1983. The Commission specifically requests comments on this interim final rule by MAY 6 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch. Copies of the documents discussed in this notice and of the comments received on the proposed rule and interim final rules may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D. C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

Pursuant to Public Law 97-415, NRC must promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards considerations, (b) criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for public comment on any such determination, and (c) procedures for consultation on any such determination with the State in which the facility involved is located.

Proposed regulations to specify standards for determining whether amendments to operating licenses or construction permits for facilities licensed under §§ 50.21(b) or 50.22 (including testing facilities) involve no significant

hazards considerations (item (a) above) were published for comment in the FEDERAL REGISTER by the Commission on March 28, 1980 (45 FR 20491). Since the Commission rarely issues amendments to construction permits and has never issued a construction permit amendment involving a significant hazards consideration, it has decided not apply these standards to amendments to construction permits and to handle these case-by-case. This is in keeping with the legislation which applies only to operating license amendments. Additionally, these standards will not now be applied to research reactors. The Commission is currently reviewing whether and how it should apply these or similar standards to research reactors. In sum, the interim final rule will amend Part 50 of the Commission's regulations to establish standards for determining whether an amendment to an operating license involves no significant hazards consideration.

The rule takes account not only of the new legislation but also the public comments received on the proposed rule. For the sake of clarity, affected prior legislation as well as the Commission's regulations and practice are discussed as background information.

Simultaneously with the promulgation of these standards in § 50.92, the Commission is publishing an interim final rule which contains criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for and public comment on a determination about whether an amendment to an operating license involves a significant hazards consideratio (item (b) above). This rule also specifies procedures for consultation on any such a determination with the State in which the facility involved is located (item (c) above). The rule appears separately in the FEDERAL REGISTER.

These regulations are issued as final, though in interim form, and comments will be considered on them. They will become effective 30 days after publication in the FEDERAL REGISTER. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time, but not later than 30 days after publication, to permit the fullest consideration of their views.

BACKGROUND

A. Affected Legislation, Regulations and Procedures

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public hearing on issuance of a construction permit or operating license for a nuclear power reactor in the absence of a request from an interested person. In 1957, the Act was amended to require that mandatory hearings be held before issuance of both a construction permit and an operating license for power reactors and certain other facilities. Public Law 85-256 (71 Stat. 576) amending § 189a. of the Act.

The 1957 amendments to the Act were interpreted by the Commission as requiring a "mandatory hearing" before issuance of amendments to construction permits and operating licenses. See, e.g., Hearing Before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2d. Sess. (April 17, 1962), at 6. Partially in response to the administrative rigidity and cumbersome procedures which this

interpretation forced upon the Commission (see, Joint Committee on Atomic Energy Staff Study, "Improving the AEC Regulatory Process", March 1961, at 49-50), section 189a. of the Act was amended in 1962 to eliminate the requirement for a mandatory public hearing except upon the application for a construction permit for a power or testing facility. As stated in the report of the Joint Committee on Atomic Energy which recommended the amendments:

> Accordingly, this section will eliminate the requirements for a mandatory hearing, except upon the application for a construction permit for a power or testing facility. Under this plan, the issuance of amendments to such construction permits, and the issuance of operating licenses and amendments to such construction permits, and the issuance of operating licenses and amendments to operating licenses, would be only after a 30-day public notice and an offer of hearing. In the absence of a request for a hearing, issuance of an amendment to a construction permit, or issuance of an operating license, or an amendment to an operating license, would be possible without formal proceedings, but on the public record. It will also be possible for the Commission to dispense with the 30-day notice requirement where the application presents no significant hazards consideration. This criterion is presently being applied by the Commission under the terms of AEC Regulations 50.59. H. Rep. No. 1966, 87th Cong., 2d. Sess., at 8.

Thus, according to the 1962 amendments, a mandatory public hearing would no longer be required before issuance of an amendment to a construction permit or operating license and a thirty-day prior public notice would be required only if the proposed amendment involved a "significant hazards consideration." In sum, section 189a. of the Act, now provides that, upon thirty-days' notice published in the FEDERAL REGISTER, the Commission may issue an operating license, or an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act, or for a testing facility licensed under section 104c., without a public hearing if no hearing is requested

by any interested person. Section 189a. also permits the Commission to dispense with such thirty-days' notice and FEDERAL REGISTER publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. These provisions have been incorporated into §§ 2.105, 2.106, 50.58(a) and (b) and 50.91 of the Commission's regulations.

The regulations provide for prior notice of a "proposed action" on an application for an amendment when a determination is made that there is a significant hazards consideration and provide an opportunity for interested members of the public to request a hearing. See §§ 2.105(a)(3) and 50.91. Hence, if a requested license amendment is found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing is completed or after expiration of the notice period. In addition, § 50.58(b) further explains the Commission's hearing and notice procedures, as follows:

> 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.

Thus, it is very important to note that a determination that a proposed license amendment does or does not present a "significant hazards consideration" has involved the hearing and attendant notice requirements. Consequently, under its present rules the Commission has generally coupled its determination about whether it should provide a hearing before issuing an amendment with its determination about whether it should issue a prior notice, and the central factor in both determinations has been the determination about "no significant hazards consideration." It has been charged that in practice this has meant that the staff has sometimes coupled the decision about the merits of an amendment to the decision about when it should notice the amendment, i.e., whether it should give prior notice or post notice. Additionally, there has been some concern that the Act and the regulations have not defined the term "significant hazards consideration" and that they have not established criteria for determining when a proposed amendment involves a "significant hazards consideration." Section 50.59 does set forth criteria for determining when a proposed change, test or experiment involves an "unreviewed safety question," but it is clear that not every such question involves a "significant hazards consideration." In any event, the Commission's practice with regard to license amendments involving no significant hazards consideration (unless, as a matter of discretion, prior notice was given) was to issue the amendment and then publish in the FEDERAL REGISTER a notice of issuance. See §2.106. In such a case, interested members of the public who wished to object to the amendment and

request a hearing could do so, but a request for a hearing did not, by itself, suspend the effectiveness of the amendment. Thus, both the notice and hearing, if one were requested, have occurred after the amendment was issued.

It is very important to bear in mind that there is no intrinsic safety significance to the "no significant hazards consideration" standard. Whether or not an action requires prior notice, no license and no amendment may be issued unless the Commission concludes that it provides reasonable assurance that the public health and safety will not be endangered and that the action will not be inimical to the common defense and security or to the health and safety of the public. See, e.g., § 50.57(a). Also, whether or not an amendment entails prior notice, no amendment to any license may be issued unless it conforms to all applicable Commission safety standards. Thus, the "no significant hazards consideration" standard has been a procedural standard only, governing whether public notice of a proposed action must be provided, before the action is taken by the Commission. In short, the "no significant hazards consideration" standard has been a notice standard and has had no substantive safety significance, other than that attributable to the process of prior notice to the public and reasonable opportunity for a hearing.

B. The Sholly Decision and the New Legislation

The Commission's practice of not providing an opportunity for a prior hearing on a license amendment not involving significant hazards considerations was held to be improper in Sholly v. NRC, 651 F.2d 780

(1980), rehearing denied, 651 F.2d 792 (1980), cert. granted 101 S.Ct. 3004 (1981) (Sholly). In that case the U.S. Court of Appeals for the District of Columbia Circuit ruled that, under section 189a. of the Act, NRC must hold a prior hearing before an amendment to an operating license for a nuclear power plant can become effective, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior notice in the FEDERAL REGISTER. At the request of the Commission and the Department of Justice, the Supreme Court agreed to review the Court of Appeals' interpretation of section 189a. of the Act. The Supreme Court has remanded the case to the Court of Appeals with instructions to vacate it if it is moot and, if it is not, to reconsider its decision in light of the new legislation.

The Court of Appeals' decision did not involve and has no effect upon the Commission's authority to order immediately effective amendments, without prior notice or hearing, when the public health, safety, or interest so requires. See, Administrative Procedure Act, § 9(b), 5 U.S.C. § 558(c), section 161 of the Atomic Energy Act, and 10 C.F.R. §§ 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements, which are designed to enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a. -- that is,

whether the person has demonstrated standing and identified one or more issues to be litigated. See, BPI v. Atomic Energy Commission, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not unreasonable for the Commission to require that the prospective intervenor first specify the basis for his request for a hearing."

However, the Commission believed that legislation was needed to change the result reached by the Court in Sholly because of the implications of the requirement that the Commission grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. The Commission believes that, since most requested license amendments involving no significant hazards consideration are routine in nature, prior hearings on such amendments could result in unwarranted disruption or delay in the operations of nuclear power plants and could impose regulatory burdens upon it and the nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S.912) that would expressly authorize it to issue a license amendment before holding a hearing requested by an interested person, when it has made a determination that no significant hazards consideration is involved in the amendment.

After the House and Senate conferees considered two similar bills, H.R.2330 and S.1207, they agreed on a unified version (see Conf. Rep. No. 97-884, 97th Cong. 2d. Sess. (1982)) and passed Public Law 97-415. Specifically, section 12(a) of that law amends section 189a. of the Act by adding the

following with respect to license amendments involving no significant hazards consideration:

> (2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.
>
> (B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.
>
> (C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located."

Section 12(b) of that law specifies that:

> (b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to an operating license upon a determination that the amendment involves no significant hazards

consideration, even though NRC has before it a request for a hearing from an interested person. At the same time, however, the legislative history makes it clear that Congress expects NRC to exercise its authority only in the case of amendments not involving significant safety questions. The Conference Report states:

> The conference agreement maintains the requirement of the current section 189a. of the Atomic Energy Act that a hearing on the license amendment be held upon the request of any person whose interest may be affected. The agreement simply authorizes the Commission, in those cases where the amendment involved poses no significant hazards consideration, to issue the license amendment and allow it to take effect before this hearing is held or completed. The conferees intend that the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration. Id., at 37.

In this regard, the Senate stressed:

> its strong desire to preserve for the public a meaningful right to participate in decisions regarding the commercial use of nuclear power. Thus, the provision does not dispense with the requirement for a hearing, and the NRC, if requested [by an interested person], must conduct a hearing after the license amendment takes effect. S. Rep. No. 97-113, 97th Cong., 1st Sess. at 14 (1981).

It should be also noted, in light of the previous discussion about the coupling of the decision on the merits of an amendment with the decision about when to notice the amendment, that Section 12 of Public Law 97-415, by providing for prior public notice and comment, in effect uncouples the determination about prior versus post notice from the determination about whether to issue an amendment.

In sum, the Commission is promulgating as an interim final rule the proposed standards in § 50.92 for determining whether an amendment to an operating license involves no significant hazards consideration, and it

is publishing separately an interim final rule to establish (a) procedures for noticing operating license amendment requests for an opportunity for a hearing, (b) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any proposed determination on no significant hazards consideration, and (c) procedures for consulting with the requisite State on any such determination.

INTERIM FINAL RULE ON STANDARDS FOR DETERMINING WHETHER AN AMENDMENT TO AN OPERATING LICENSE INVOLVES NO SIGNIFICANT HAZARDS CONSIDERATIONS AND EXAMPLES OF AMENDMENTS THAT ARE CONSIDERED LIKELY OR NOT LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS

A. Petition and Proposed Rule

The Commission's interim final rule on standards for determining whether an amendment involves no significant hazards consideration completes its actions on the notice of proposed rulemaking (discussed above), which was issued in response to a petition for rulemaking (PRM 50-17) submitted by letter to the Secretary of the Commission on May 7, 1976, Mr. Robert Lowenstein. For the reasons discussed below, the petition is denied. However, the Commission is promulgating standards, as intended by the petitioner, though not the standards petitioned for. (PRM-50-17 was published for comment in the FEDERAL REGISTER on June 14, 1976 (41 FR 24006)). The staff's recommendations on this petition are in SECY-79-660 (December 13, 1979). The notice of proposed rulemaking was published in the FEDERAL REGISTER on March 28, 1980 (45 FR 20491). The staff's recommendations on the interim final rule are in SECY-81-366, 81-366A, 83-16, 83-16A and 83-16B. (These documents are available for examination in the Commission's Public Document Room at 1717 H Street, N.W. Washington, D.C.)

The petitioner requested that 10 C.F.R. Part 50 of the Commission's regulations be amended with respect to the procedures for issuance of amendments to operating licenses for production and utilization facilities. The petitioner's proposed amendments to the regulations would have required that the staff take into consideration (in determining whether a proposed amendment to an operating license involves no significant hazards consideration) whether operation of the plant under the proposed license amendment would (1) substantially increase the consequences of a major credible reactor accident or (2) decrease the margins of safety substantially below those previously evaluated for the plant and below those approved for existing licenses. Further, the petitioner proposed that, if the staff reaches a negative conclusion about both of these standards, the proposed amendment must be considered not to involve a significant hazards consideration.

In issuing the proposed rule, the Commission sought to improve the licensing process by specifying in the regulations standards on the meaning of no significant hazards consideration. These standards would have applied to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permits, to whatever extent considered appropriate. As mentioned before, the Commission now believes that these standards should not be applied to amendments to construction permits, not only because construction permits do not normally involve a significant hazards consideration but also because such amendments are very rare; the proposed rule has been modified accordingly. Additionally, the Commission is reviewing the extent to which and the way standards should be applied to research reactors. The Commission will handle

case-by-case any amendments equested for construction permits or for research reactors with respect to the issue of significant hazards considerations.

In the statement of considerations which accompanied the proposed rule, the Commission explained that it did not agree with the petitioner's proposed standards because of the limitation to "major credible reactor accidents" and the failure to include accidents of a type different from those previously evaluated.

During the past several years the Commission's staff has been guided, in reaching its determinations with respect to no significant hazards consideration, by standards very similar to those now described in this interim final rule as well as by examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These have proven useful to the staff, and the Commission employed them in developing the proposed rule. The notice of proposed rulemaking contained standards proposed by the Commission to be incorporated into Part 50, and the statement of considerations contained examples of amendments to an operating license that are considered likely and not likely to involve a significant hazards consideration. The examples were samples of precedents with which the staff was familiar; they were representative of certain kinds of circumstances; however, they did not cover the entire range of possibilities; nor did they cover every facet of a particular situation. Therefore, they had to be used together with standards in determining whether or not a proposed amendment involved significant hazards considerations.

The three standards proposed in the notice of proposed rulemaking were whether the license amendment would: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety.

Before responding to the specific comments on the proposed rule, it should be noted again that it was structured so that the three standards would have been used to decide not only whether the Commission would publish prior notice of an amendment request (as opposed to notice after the amendment was issued) but also to decide whether to grant an opportunity for hearing before issuance of the amendment (as opposed to granting the opportunity after issuance). As explained before, the standards were not meant to be used to make the ultimate decision about whether to issue an amendment -- that final decision is a public health and safety judgment on the merits, not to be confused with the decisions on notice and reasonable opportunity for a hearing.

As a result of the legislation, under the final rule the three standards would no longer be used to make a determination about whether or not to issue prior notice of an amendment request. As fully described in the separate FEDERAL REGISTER notice mentioned before, the Commission has formulated separate notice and State consultation procedures that will provide in all (except emergency and some exigent) situations prior notice of amendment requests. The standards and the examples will usually be limited to a proposed determination and, when a hearing request is received, to a final determination about whether or not significant hazards

considerations are involved in connection with an amendment and, therefore, whether or not to offer an opportunity for a hearing before an amendment is issued. The decision about whether or not to issue an amendment is meant to remain one that, as a separate matter, is based on public health and safety.

B. Comments on the Proposed Rule

1. General

Nine persons submitted comments on the petition for rulemaking and nine persons submitted comments on the proposed amendments. The comments on the petition are in SECY-79-660. The comments on the proposed rule are in SECY file PR-2, 50 (45 FR 20491). A summary of the comments and initially-proposed responses to the comments are in SECY-81-366, available for examination at the Commission's Public Document Room. In light of the legislation, the Commission has decided to make its approach more precise (as described below) and has, therefore, revised its response to the comments. The new response is found in SECY-83-16A and 83-16B.

One of the commenters stated that all three standards are unclear and useless in that they imply a level of detailed review of amendment applications far beyond what the staff normally performs. It is the Commission's considered judgment that the standards have been and will continue to be useful in making the necessary reviews. Moreover, the Commission believes that the standards when used together with the examples will enable it to make the requisite decisions. In this regard, it should be noted that Congress was more than aware of the Commission's standards and proposed their expeditious promulgation. For example, Senate Report No. 97-113, cited above, stated:

> ... the Committee notes that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards consideration. The Committee believes that the Commission should be able to build upon this past effort, and it expects the Commission to act expeditiously in promulgating the required standards within the time specified in section 301 [i.e., within 90 days after enactment]. Id. at 15.

Similarly, the House noted:

> The committee amendment provides the Commission with the authority to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189(a) when it determines that the amendment involves no significant hazards consideration. However,the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Sholly decision that such a hearing, upon request, be subsequently held. Moreover, the Committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations.... H. Rep. No. 97-22 (Part 2), 97th Cong., 1st Sess., at 26 (1981) (Emphasis added).

A number of commenters recommended, in regard to the second criterion in the proposed rule, that a threshold level for accident consequences (for example, the limits in 10 C.F.R. Part 100) be established to eliminate insignificant types of accidents from being given prior notice. This comment was not accepted. Setting a threshold level for accident consequences could eliminate a group of amendments with respect to accidents which have not been previously evaluated or which, if previously evaluated, may turn out after further evaluation to have more severe consequences than previously evaluated.

It is possible, for example, that there may be a class of license amendments sought by a licensee which, while designed to improve or

increase safety may, on balance, involve a significant hazards consideration because they result in operation of a reactor with a reduced safety margin due to other factors or problems (i.e., the net effect is a reduction in safety of some significance). Such amendments typically are also proposed by a licensee as an interim or final resolution of some significant safety issue that was not raised or resolved before issuance of the operating license -- and, based on an evaluation of the new safety issue, they may result in a reduction of a safety margin believed to have been present when the license was issued. In this instance, the presence of the new safety issue in the review of the proposed amendment, at least arguably, could prevent a finding of no significant hazards consideration, even though the issue would ultimately be satisfactorily resolved by the issuance of the amendment. Accordingly, the Commission added to the list of examples considered likely to involve a significant hazards consideration a new example (vii).

When the legislation described before was being considered, the Senate Committee on Environment and Public Works commented upon the Commission's proposed rule before it reported S. 1207. It stated:

> The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committtee anticipates, for example, that consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools. Id., at 15.

The Commission agrees with the Committee "that reasonable persons may differ

and it has tried "to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration." The Commission believes that the standards coupled with the examples help draw as clear a distinction as practicable. It has decided not to include the examples in the text of the rule in addition to the original standards, but, rather, to keep them as guidelines under the standards for the use of the Office of Nuclear Reactor Regulation.

The Commission wishes licensees to note that when they consider license amendments outside the examples, the Commission may need additional time for its determination on no significant hazards considerations; thus, they should factor this information into their schedules for developing and implementing such changes to facility design and operation.

The interim final rule thus goes a long way toward meeting the intent of the legislation. In this regard, the Conference Report stated:

> The conferees also expect the Commission, in promulgating the regulations required by the new subsection (2)(C)(i) of section 189a. of the Atomic Energy Act, to establish standards that to the extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those amendments that involve no such consideration. These standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental considerations. These standards should be capable of being applied with ease and certainty, and should ensure that the NRC staff does not resolve

doubtful or borderline cases with a finding of no significant hazards consideration. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 37 (1982).

It should be noted that the Commission has attempted to draft standards that are as useful and as clear as possible, and it has tried to formulate examples that will help in the application of the standards. These final standards are the product of a long deliberative process. As will be recalled, standards were submitted by a petition for rulemaking in 1976 for the Commission's consideration. The standards and examples are as clear and certain as the Commission can make them -- and, to repeat the Conference Report, "should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." The Commission welcomes suggestions from the public to make them clearer and more precise, recognizing, in the Senate Committee's words, "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration."

With respect to the Conference Committee's statement, quoted above, that the "standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment," as will be recalled, it has been the Commission's general practice to couple the determination about prior versus post notice with the determination about provision of a prior hearing versus a hearing after issuance of the amendment; thus, occasionally, the issue of prior versus post notice was seen by some as including a judgment on the merits of issuance of an amendment. Consequently,

one commenter suggested that application of the criteria with respect to prior notice in many instances will necessarily require the resolution of substantial factual questions which largely overlap the issues which bear on the merits of the license amendment. The implication of the comment was that the Commission at the prior notice stage could lock itself into a decision on the merits. Conversely, the commenter stated that the staff, in using the no significant hazards consideration standards, was reluctant to give prior notice of amendments because its determination about the notice might be viewed as constituting a negative connotation on the merits.

In any event, the legislation has made these comments moot by requiring separation of the criteria used for providing or dispensing with public notice and comment on no significant hazards consideration determinations from the standards used to make a determination about no significant hazards consideration. Under the legislation, the Commission's criteria for public notice and comment would not be the same as its standards on the determination about no significant hazards consideration. In fact, the Commission will normally provide prior notice (for public comment and for an opportunity for a hearing) for each operating license amendment request. (The Commission's criteria on public notice and comment are discussed in the separate FEDERAL REGISTER notice noted before.) Additionally, the Commission believes that use of these standards and examples will help it reach sound decisions about the issues of significant versus no significant hazards considerations and that their use would not prejudge the merits of a decision.

It holds this belief because the standards and the examples are merely screening devices for a decision about whether to hold a hearing before as opposed to after an amendment is issued and cannot be said to prejudge the Commission's final decision to issue or deny the amendment request. As explained above, that decision is a separate one, based on separate public health and safety findings.

2. Reracking of Spent Fuel Pools

The Commission has been providing prior notice and opportunity for prior hearing on requests for amendments involving reracking of spent fuel pools. The Commission is not prepared to say that a reracking of a spent fuel storge pool will necessarily involve a significiant hazards consideration. Nevertheless, as shown by the legislative history of Public Law 97-415, section 12(a), the Congress was aware of the Commission's practice and statements were made by members of both Houses, before passage of that law, that these members thought the practice would be continued. The report on the Senate side has been quoted above; the discussion in the House is found at 127 Cong. Record at H 8156, Nov. 5, 1981.

The Commission is not including reracking in the list of examples that will be considered likely to involve a significant hazard consideration, because a significant hazards consideration finding is a technical matter which has been assigned to the Commission. However, in view of the expressions of Congressional understanding, the Commission feels that the matter deserves further study. Accordingly, the staff has been

directed to prepare by August 1, 1983, a report (1) which reviews NRC experience to date with respect to spent fuel pool expansion reviews, and (2) which provides a technical judgment on the basis which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration. Upon receipt and review of this report, the Commission will revisit this part of the rule.

During the interim, the Commission will make a finding on the question of no significant hazards consideration for each reracking application, on a case-by-case basis, giving full consideration to the technical circumstances of the case, using the standards in § 50.92 of the rule. It is not the intent of the Commission to make a no significant hazards consideration finding for reracking based on unproven technology. However, where reracking technology has been well developed and demonstrated and where the Commission determines on a technical basis that reracking involves no significant hazards, the Commission should not be precluded from making such a finding. If the Commission determines that a particular reracking involves significant hazards considerations, it will provide an opportunity for a prior hearing, as explained in the separate FEDERAL REGISTER notice.

Additionally, it should be noted that under section 134 of the Nuclear Waste Policy Act of 1982, an interested party may request a "hybrid" hearing in connection with reracking, and may participate in such a hearing, if one is held. The Commission will publish in the near future a FEDERAL REGISTER notice describing this type of hearing with respect to expansions of spent fuel storage capacity and other matters concerning spent fuel.

3. Amendments Involving Irreversible Consequences

The Conference Report stated:

> The conferees intend that in determining whether a proposed license amendment involves no significant hazards consideration, the Commission should be especially sensitive to the issue posed by license amendments that have irreversible consequences (such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections). In those cases, issuing the order in advance of a hearing would, as a practical matter, foreclose the public's right to have its views considered. In addition, the licensing board would often be unable to order any substantial relief as a result of an after-the-fact hearing. Accordingly, the conferees intend the Commission be sensitive to those license amendments which involve such irreversible consequences. (Emphasis added.) Id., at 37-38.

This statement was explained in a colloquy between Senators Simpson and Domenici, as follows:

> Mr. DOMENICI. In the statement of managers, I direct attention to a paragraph in section 12, the so-called Sholly provision, wherein it is stated that in applying the authority which that provision grants the NRC should be especially sensitive to the issue posed by license amendments that have irreversible consequences." Is that paragraph in general, or specifically, the words "irreversible consequences" intended to impose restrictions on the Commission's use of that authority beyond the provisions of the statutory language? Can the Senator clarify that, please?
>
> Mr. SIMPSON. I shall. It is not the intention of the managers that the paragraph in general, nor the words "irreversible consequences," provide any restriction on the Commission's use of that authority beyond the statutory provision in section 189a. Under that provision, the only determination which the Commission must make is that its action does not involve a significant hazard. In that context, "irreversibility" is only one of the many considerations which we would expect the Commission to consider. It is the determination of hazard which is important, not whether the action is irreversible. Clearly, there are many irreversible actions which would not pose a hazard. Thus where the Commission determines that no significant hazard is involved, no further consideration need be given to the irreversibility of that action.
>
> Mr. DOMENICI. I thank the Senator for the clarification. That is consistent with my readings of the language.... 134 Cong. Rec. (Part II) at S. 13056 (daily ed. Oct. 1, 1982).

The statement was further explained in a colloquy between Senators Mitchell and Hart, as follows:

> Mr. MITCHELL. The portion of the statement of managers discussing section 12 of the report, the so-called Sholly provision, stresses that in determining whether a proposed amendment to a facility operating license involves no significant hazards consideration, the Commi ison "should be especially sensitive . . . to license amendments that have irreversible consequences." Is my understanding correct that the statement means the Commission should take special care in evaluating, for possible hazardous considerations, amendments that involve irreversible consequences?
>
> Mr. HART. The Senator's understanding is correct. As you know, this provision seeks to overrule the holding of the U.S. Court of Appeals for the District of Columbia in Sholly against Nuclear Regulatory Commission. That case involved the venting of radioactive krypton gas from the damaged Three Mile Island Unit 2 reactor -- an irreversible action.
>
> As in this case, once the Commission has approved a license amendment, and it has gone into effect, it could prove impossible to correct any oversights of fact or errors of judgment. Therefore, the Commission has an obligation, when assessing the health or safety implications of an amendment having irreversible consequences, to insure that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing. Id. (Part III), at S. 13292.

In light of the Conference Report and colloquies quoted above, the Commission wishes to note that it will make sure "that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing." It will do this by providing in § 50.92 of the rule that it will review proposed amendments with a view as to whether they involve irreversible consequences. In this regard, example (iii) makes clear that an amendment which allows a plant to operate at full power during which one or more safety systems are not operable would be treated in the same way as other examples considered likely to involve a significant hazards

consideration in that it is likely to meet the criteria in § 50.92 of the rule.

Finally, it is once again important to note that the examples do not cover all possible examples and may not be representative of all possible concerns. As new information is developed, the Commission will refine these examples and add new examples, in keeping with the standards in § 50.92 of the interim final rule -- and, if necessary, it will tighten the standards themselves.

The Commission has left the proposed rule intact to the extent that the rule states standards with respect to the meaning of "no significant hazards consideration." The standards in the interim final rule are substantially identical to those in the proposed rule, though the attendant language in new § 50.92 as well as in § 50.58 has been revised to make the determination easier to use and understand. To supplement the standards that are being incorporated into the Commission's regulations, the guidance embodied in the examples will be referenced in the procedures of the Office of Nuclear Reactor Regulation, a copy of which will be placed in the Commission's Public Document Room.

EXAMPLES OF AMENDMENTS THAT ARE CONSIDERED LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS ARE LISTED BELOW

Unless the specific circumstances of a license amendment request, when measured against the standards in § 50.92, lead to a contrary conclusion, then, pursuant to the procedures in § 50.91, a proposed

amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves one or more of the following:

(i) A significant relaxation of the criteria used to establish safety limits.

(ii) A significant relaxation of the bases for limiting safety system settings or limiting conditions for operation.

(iii) A significant relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety (such as allowing a plant to operate at full power during a period in which one or more safety systems are not operable).

(iv) Renewal of an operating license.

(v) For a nuclear power plant, an increase in authorized maximum core power level.

(vi) A change to technical specifications or other NRC approval involving a significant unreviewed safety question.

(vii) A change in plant operation designed to improve safety but which, due to other factors, in fact allows plant operation with safety margins significantly reduced from those believed to have been present when the license was issued.

EXAMPLES OF AMENDMENTS THAT ARE CONSIDERED NOT LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS ARE LISTED BELOW

Unless the specific circumstances of a license amendment request, when measured against the standards in § 50.92, lead to a contrary conclusion then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve no significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves only one or more of the following:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met.

(v) Upon satisfactory completion of construction in connection with an operating facility, a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. This is intended to involve only restrictions where it is justified that construction has been completed satisfactorily.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

(viii) A change to a license to reflect a minor adjustment in ownership shares among co-owners already shown in the license.

Paperwork Reduction Act Statement

This final rule contains no new or amended requirements for record keeping, reporting, plans or procedures, applications or any other type of information collection.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and testing facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 C.F.R. Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a regulatory analysis on these amendments, assessing the costs and benefits and resource impacts. It may be examined at the address indicated above.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations, 10 C.F.R.

List of Subjects in 10 C.F.R. Part 50.

Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

PART 50 -- DOMESTIC LICENSING OF
PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 and 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 U.S.C. 955 (42 U.S.C 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.58, paragraph (b) is revised to read as follows:

§50.58 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 of this part, 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, in an emergency situation, as defined in § 50.91, that no significant hazards consideration is presented by an application for an amendment to an operating license, it may dispense with public notice and and comment and may issue the amendment. If the Commission finds that exigent circumstances exist, as described in § 50.91, it may reduce the period provided for public notice and comment. Both in an emergency situation and in the case of exigent circumstances, the Commission will provide 30 days notice of opportunity for a hearing, though this notice may be published after issuance of the amendment if the Commission determines that no significant hazards considerations are involved. The Commission will use the standards in § 50.92 to determine whether a significant hazards consideration is presented by an amendment to an operating license for a facility of the type described in § 50.21(b) or § 50.22, or which is a testing facility, and may make the amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

3. Section 50.91 is redesignated as § 50.92 and revised to read as follows:

§ 50.92 Issuance of amendment.

(a) In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the

considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued prior to the issuance of the amendment to the license. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action pursuant to § 2.105 of this chapter before acting thereon. The notice will be issued as soon as practicable after the application has been docketed.

(b) The Commission will be particularly sensitive to a license amendment request that involves irreversible consequences (such as one that, for example, permits a significant increase in the amount of effluents or radiation emitted by a nuclear power plant).

(c) The Commission may make a final determination, pursuant to the procedures in § 50.91, that a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility involves no significant hazards considerations, if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The views of Chairman Palladino and Commissioners Ahearne, Gilinsky and Asselstine follow.

Dated at Washington, D.C. this 4th day of April, 1983.

For the Nuclear Regulatory Commission,

Samuel J. Chilk
Secretary for the Commission

Attachment 2
DLOP 228

CHAIRMAN PALLADINO'S ADDITIONAL VIEWS

In my opinion the Commission's decision on reracking represents its best technical judgment at this time on the generic no-significant-hazards question. That is, the Commission cannot say that reracking, as a general matter, would or would not involve a significant hazards consideration. The technical considerations of reracking proposals can vary significantly from one to another.

It was this latter fact, as well as the statements made in the Congress on reracking, that caused me to vote for the staff to study the technical basis for judgments about the hazards considerations presented by particular reracking applications.

I also believe that we may have cleared up one of the Congressional concerns about reracking by stating that it is not our intent to make a no-significant-hazards-consideration finding for reracking based on unproven technology.

ADDITIONAL COMMENTS OF COMMISSIONER AHEARNE

There have been several complaints that the criteria for determining when an amendment involves significant hazards considerations are unclear or difficult to apply. For example, in the current notice the Commission notes that a commenter on the proposed rule stated the standards are "unclear and useless in that they imply a level of detailed review of amendment applications far beyond what the staff normally performs."[1] However, these criticisms must be considered in context.

In May 1976 a petition for rulemaking was filed which requested that criteria be specified for determining when an amendment involved no significant hazards considerations.[2] The petition was published for comment in 1976.[3] The Commission received a few comments, primarily supporting or opposing criteria which had been proposed in the petition. The discussion focused on underlying philosophical/legal issues rather than specific alternative criteria.

The rulemaking then lay dormant for several years. In late 1979 the Commission addressed the matter and agreed to issue a proposed rule for

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[1]This refers to: "Comments by the Natural Resources Defense Council and the Union of Concerned Scientists on Proposed amendments to 10 CFR Parts 2 and 50: No Significant Hazards Consideration" at 8 (May 23, 1980) (comment 3, PR-2,50 (45 FR 20491)).

[2]The petition was filed May 7, 1976 by Mr. Robert Lowenstein on behalf of Boston Edison Company, Florida Power and Light Company, and Iowa Power Company.

[3]41 Fed. Reg. 24006 (June 14, 1976).

public comment. The proposed rule was published in March 1980.[4] As the Commission explained in that notice:

> "During the past several years, the Staff has been guided in reaching its findings with respect to 'no significant hazards consideration' by staff criteria and examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These criteria and examples have been promulgated within the Staff and have proven useful to the Staff. The Commission believes it would be useful to consider incorporating these criteria into the Commission's regulations for use in determining whether a proposed amendment to an operating license or to a construction permit of any production or utilization facility involves no significant hazards consideration."[5]

With respect to the criticism that the criteria are unclear, we have not received much assistance in developing clearer criteria despite having obtained two rounds of comment over the last seven years. For example, in the comment on the proposed rule mentioned above, NRDC and UCS simply argued: "The NRC should promulgate a rule holding that prior notice and opportunity for hearing should be provided for construction permit and operating licenses amendments in all cases except those involving no significant previously-unreviewed safety issue."[6] In addition, the debate has often

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[4] 45 Fed. Reg. 20491 (March 28, 1980).

[5] Id. at 20492.

[6] Id. at 11. 10 CFR 50.59 deems actions to be an "unreviewed safety question":

> "(i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced."

NRDC/UCS did not propose an alternate definition to be used with their proposal. It is interesting to note the substantial similarity to the significant hazards consideration test.

become confused by differing assumptions and philosophies that are not usually clearly identified. For example, the NRDC/UCS implication of a detailed level of review arises largely because of an implicit assumption that the criteria are intended to require a merits type review. In fact, what the staff has always done, and what I believe we had in mind, was to make a preliminary judgment.

Basically, we have done the best we can. I would be willing to address any specific alternatives. However, after dealing with this for a number of years, I believe we must move ahead with what we have.

ADDITIONAL VIEWS OF COMMISSIONER ASSELSTINE

I strongly disagree with the Commission majority's decision to permit the use of the "Sholly amendment" authority contained in section 12 of Public Law 97-415, the NRC Authorization Act for fiscal years 1982 and 1983, for license amendments for the reracking of a spent fuel pool.

The Commission majority's interim final rule would change the Commission's longstanding and consistent policy of requiring that any requested hearing on a license amendment for the reracking of a spent fuel pool be completed prior to granting the license amendment. Although the Commission has considered and approved a large number of spent fuel pool reracking amendments in the past, it has never used the no significant hazards consideration provisions in section 189 a. of the Atomic Energy Act of 1954 as a basis for approving the amendment before the completion of a requested hearing.

It is clear to me from the legislative history of section 12 of Public Law 97-415 that the Congress did not intend that the authority granted by section 12 should be used to approve reracking amendments prior to the completion of any requested hearing. The Sholly amendment was first included in the NRC authorization bill for fiscal years 1982 and 1983 by the Senate Committee on Environment and Public Works. The

4/4/83

COMMISSIONER GILINSKY'S SEPARATE VIEWS ON THE INTERIM FINAL RULE REGARDING STANDARDS FOR DETERMINING WHETHER LICENSE AMENDMENTS INVOLVE NO SIGNIFICANT HAZARDS CONSIDERATIONS (AMENDMENTS TO 10 CFR PART 50)

Standing by themselves, the standards which are set forth in the rule are so general that they offer no real guidance to the NRC staff. In a prior version of the rule, the Commission included, in the rule itself, some very useful examples of which amendments do and do not involve a significant hazards consideration. In the final version, these examples have been downgraded to the preamble of the rule where they will be of little or no legal consequence and where, as a practical matter, they will be inaccessible to anyone but the NRC historian. This diminishes the value of the rule so much that I can no longer approve it.

The earlier version of the rule placed amendments authorizing substantial spent fuel pool expansions in the significant hazards consideration category. The Commission should have retained this categorization which is consistent with the terms of the rule. Moreover, the Commission should not have ignored the strong public and Congressional views which have been expressed on this point, most recently by Senators Simpson, Hart, and Mitchell. I am in agreement with Commissioner Asselstine's analysis of the legislative record underlying this provision.

modification to the plant and because of the significance attached to reracking by State and local officials and by the public.

Finally, I believe that there are strong public policy reasons for continuing the Commission's past practice of completing hearings on reracking amendment proposals before approving the amendment. These public policy reasons include the strong interest and concern on the part of State and local governments and the public regarding reracking proposals and the extent to which proceeding with reracking in advance of the hearing may prejudice the later consideration of other alternatives to the proposed reracking plan.

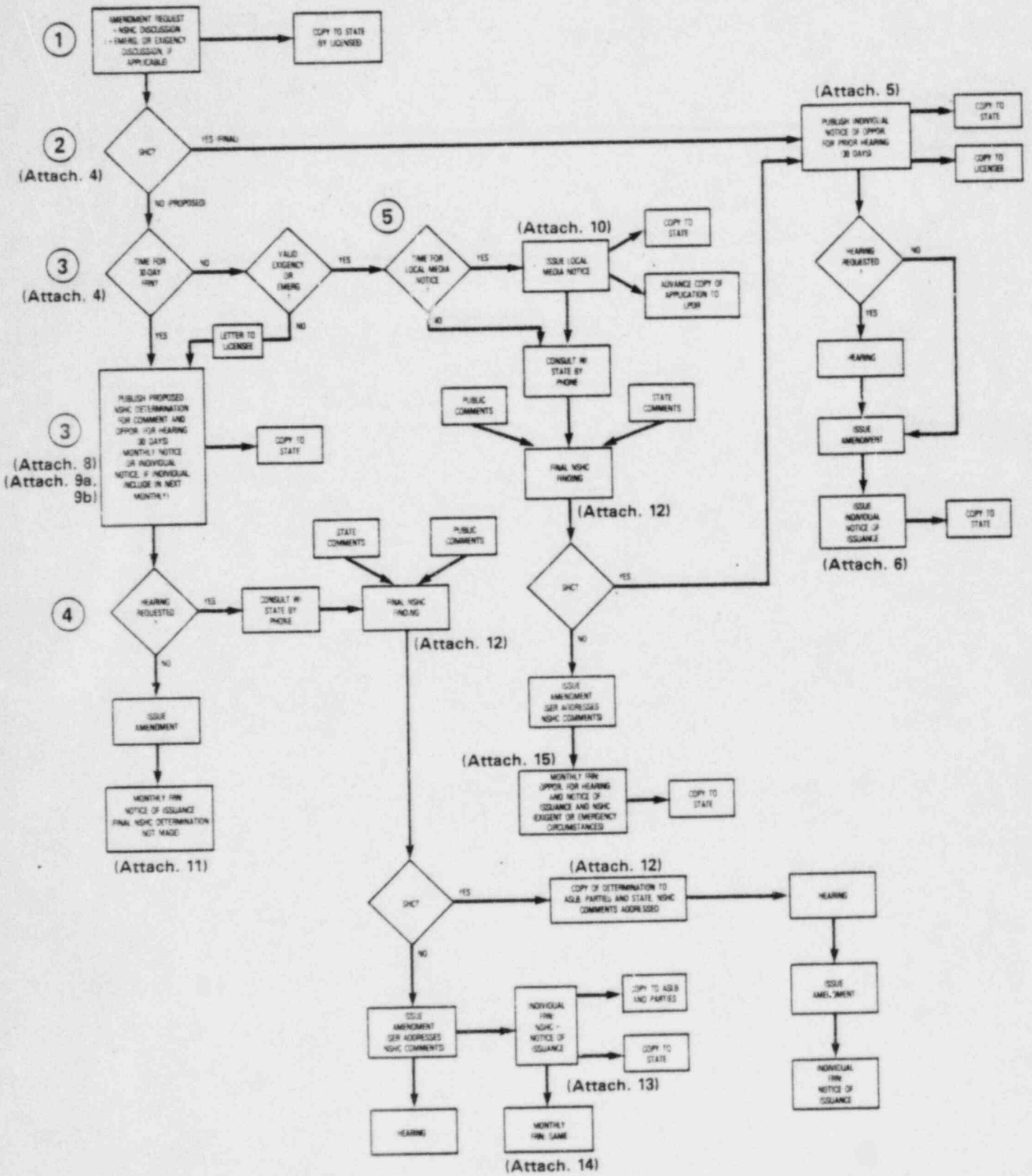
For these reasons, as a matter of policy, I would not permit the use of the Sholly amendment authority to approve reracking amendments prior to the completion of any requested hearing. I would therefore have added a provision to the Commission's interim final rule that would have required, as a policy matter, the completion of any requested hearing on a spent fuel pool reracking amendment before Commission approval of the amendment.

report of that Committee on the bill (Senate Report 97-113) makes it abundantly clear that the Committee did not intend the Sholly amendment to be used by the Commission to approve reracking amendments in advance of the completion of a requested hearing. Although the report of the Conference Committee on the bill did not repeat this admonition, there is no evidence to indicate a contrary view by the House-Senate conferees on the bill or by the two House Committees that considered the legislation.

Moreover, I believe that the use of the Sholly amendment authority to approve reracking amendments before the completion of any required hearing goes far beyond the justification offered by the Commission when it requested the Sholly amendment. In requesting the enactment of the Sholly amendment, the Commission described in some detail the situations in which it foresaw the need for this authority. The Commission emphasized the need for a large number of unforeseen and unanticipated changes to the detailed technical specifications in the operating licenses for nuclear powerplants that arise each year through such activities as refueling of the plant. The Commission argued that the need to hold a hearing on each of these changes, if one is requested, would be burdensome to the Commission and could disrupt the operation of a number of plants. In order to avoid this problem, the Commission asked the Congress to reinstate the authority that the Commission had exercised in similar situations since 1962. A reracking amendment is substantially different from the situations described by the Commission in requesting the Sholly amendment, because the need for reracking can be anticipated, because reracking involves a substantial physical

FLOW DIAGRAM

STATE CONSULTATION, NOTICING AND NO SIGNIFICANT HAZARDS CONSIDERATION PROCEDURES



Attachment 4
DLOP 228

INITIAL

NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION

AND NOTICING ACTION

Docket No. _____ Facility: _____

Licensee: _____ Date of application _____

Request for: _____

_____

_____

_____

Initial Determination:

( ) Proposed determination - amendment request involves no significant hazards considerations (NSHC).

( ) Final determination - amendment request involves significant hazards considerations (SHC).

Basis for Determination

( ) Licensee's NSHC discussion has been reviewed and is accepted.

( ) Other (state). _____

_____

_____

_____

_____

_____

_____ (attach additional sheets as needed)

Initial Noticing Action: (Attach appropriate notice or input for monthly FRN)

1. ( ) Monthly FRN. Notice of opportunity for hearing (30 days) and request for comments on proposed NSHC determination -- monthly FRN input is attached (Attachment 8).

2. ( ) Individual FRN. Same notice matter as above. Time does not allow waiting for next monthly FRN (Attachments 9a and 9b).

(This form should be typed except for unusual, urgent circumstances.)

3. ( ) No initial FRN. Valid exigent circumstances exist (evaluated below). Local media notice requesting public comments on proposed NSHC determination is attached (Attachment 10).

4. ( ) No initial FRN or local media notice. A valid emergency situation exists (evaluated below) and there is no time for public notice on proposed NSHC determination. (No attachment)

5. ( ) Individual FRN. Licensee's claim of exigent or emergency circumstances is invalid (evaluated below). Notice of opportunity for hearing (30 days) and request for comments on proposed NSHC determination is attached (Attachments 9a and 9b). Letter of explanation to licensee is also attached.

6. ( ) Individual FRN. The amendment request involves SHC. Notice of opportunity for prior hearing is attached (Attachment 5). Letter to licensee also attached.

Evaluation of exigent or emergency circumstances (if applicable): _____

_____

_____

_____

_____

_____

_____

_____

_____ (attach additional sheets as needed)

Approvals: Date

1. _____ _____
(Project Manager)

2. _____ _____
(Branch Chief)

3. _____ _____
(OELD)

Additional approval (for noticing action types 4, 5 and 6)

4. _____ _____
(Assistant Director)

Additional approval (for noticing action types 4 and 5):

5. _____ _____
(Director, Division of Licensing)

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: (Responsible supervisor for Monthly FR Notices)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR A HEARING

Licensee: Docket No.

Facility: Location:

Date of amendment request:

Description of amendment request:*

Basis for proposed no significant hazards consideration determination.*

Local Public Document Room location:

Attorney for licensee: (name and address)

NRC Branch Chief: (name)

(Branch Chief)

cc: Project Manager
Licensing Assistant

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* See page 12 of this procedure for required content.

Attachment 9b
DLOP 223

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: (Responsible Supervisor for Monthly FR Notices)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING (REPEAT OF INDIVIDUAL NOTICE)

Licensee: Docket No. 50-

Facility: Location:

Date of amendment request:

Brief description of amendment:

Date of publication of individual notice in Federal Register: (date), (page).

Expiration date of individual notice: (Date)

Local Public Document Room Location: _____

(Branch Chief)

cc: Project Manager
Licensing Assistant

NOTE: This memorandum should be completed as soon as the Federal Register publication date and page number of the associated individual notice are known.

SAMPLE MEMORANDUM TO REGIONAL PUBLIC AFFAIRS OFFICER AND PRESS RELEASE

MEMORANDUM FOR: _____
Public Affairs Officer
Region ___

FROM: (Branch Chief)

SUBJECT: PROPOSED PRESS RELEASE

Attached is a proposed press release relating to an application for an amendment to the operating license for the _____(name of facility)_____ dated _____.

Because of exigent circumstances, time does not allow for normal publication in the Federal Register.

It is requested that this announcement be released as soon as possible to the media in the area of the facility and that a copy be sent to the State official and licensee.

(Branch Chief)

Attachment:
Press release

cc/attachment

Director, OPA
Assistant Director
Project Manager
Director/DL
OELD
Licensing Assistant

(When this form is approved, an advance copy of the application should be sent to the LPDR. Contact LPDR Branch Chief for assistance.)

SAMPLE PRESS RELEASE

The Nuclear Regulatory Commission staff has received an application dated (date) from (licensee) for an amendment to the operating license for the (facility) located in (location).

If approved, the amendment would (describe request)*

(Licensee) has requested NRC action on its request by (date).

Following an initial review of this application, the staff has made a proposed (preliminary) determination that the requested amendment involves no significant hazards consideration. Under NRC regulations, this means that the proposed amendment does not involve a significant increase in the probability or consequences of an accident, would not create the possibility of a new or different kind of accident, or involve a significant reduction in a safety margin.

(Describe basis for determination.)*

The Commission has determined that due to exigent circumstances, there is no time to publish for public comment before issuance its usual notice in the Federal Register of the proposed action. The exigent circumstances result from _____.

If the proposed determination becomes final, the staff will issue the amendment without first offering an opportunity for a public hearing. An opportunity for a hearing will be published in the Federal Register at a later date and any hearing request will not delay the effective date of the amendment.

If the staff decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the Federal Register and, if a hearing is granted, it will be held before the amendment is issued.

Comments on the proposed determination may be telephoned to (name), Chief of (branch), by collect call to (commercial number). All comments received by (date) will be considered in reaching a final determination. A copy of the application may be examined at the NRC's local public document room located at (location).

*See page 12 of DLOP 228 for required content.

Copy to: (by Regional PAO)
1. Licensee
2. State official

Attachment 11
DLOP 228

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: (Responsible Supervisor for Monthly FR Notices)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

Licensee: Docket No. 50-

Facility: Location:

Date of application for amendment:

Brief description of amendment:

Date of issuance: Effective date:

Amendment No. Facility Operating License No.:

Amendment revised the (Technical Specifications) (license) (both).

Date of initial notice in Federal Register: (date) (page).

The Commission's related evaluation of the amendment is contained in a (letter dated_____) (Safety Evaluation) (Environmental Impact Appraisal).

No significant hazards consideration comments received (Yes) (No).

Source: (public) (State)

Location of Local Public Document Room:

(Branch Chief)

cc: Project Manager
Licensing Assistant

Attachment 12
DLOP 228

FINAL NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION

Docket No. _____ Facility _____

Licensee: _____ Date of application _____

1. Attach initial NSHC determination (Attachment 4) relating to this action.

2. Summary of State telephone consultation:

3. Summary of any public comments received by telephone:

4. Attach any written State or public comments regarding NSHC.

5. Final determination

   ( ) The amendment request involves no significant hazards consideration.

   ( ) The amendment request involves a significant hazards consideration.

6. Basis for determination and response to comments received. (Attach additional sheets, if necessary.)

7. Concurrences: Date

   a. _____ _____
   (Project Manager)

   b. _____ _____
   (Branch Chief)

   c. _____ _____
   (Assistant Director)

   d. _____ _____
   (OELD)

8. Approved:

   _____ _____
   (Director, Division of Licensing)

Attachment 13
DLOP 228

SAMPLE INDIVIDUAL NOTICE OF
ISSUANCE OF AMENDMENT AND
FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

7590-01

U. S. NUCLEAR REGULATORY COMMISSION

(LICENSEE)

DOCKET NO. _____

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY
OPERATING LICENSE
[AND NEGATIVE DECLARATION]*
AND FINAL DETERMINATION OF NO SIGNIFICANT
HAZARDS CONSIDERATION

The U. S. Nuclear Regulatory Commission (Commission) has issued Amendment No. ___ to Facility Operating License No. _____, issued to (name of licensee) (the licensee), which revised the Technical Specifications for operation of the (name of facility) (the facility) located in (location). The amendment was effective as of the date of its issuance.

The amendment (general description and changes made) _____.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the FEDERAL REGISTER on (date and FR citation). A request for a hearing was filed on (date) by (petitioner).

*Where appropriate. See 10 CFR 51.50 for notice requirements where an EIS has been prepared.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

[The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.] or [The Commission has prepared an Environmental Impact Appraisal related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated _____.]

For further details with respect to the action see (1) the application for amendment dated _____, (2) Amendment No. _____to Facility Operating License No. _____, and (3) the Commission's related Safety Evaluation [and Environmental Impact Appraisal]. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C., and at the _____(local PDR)_____.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this _____ day of _____, 19___.

FOR THE NUCLEAR REGULATORY COMMISSION

Chief
Branch
Division of Licensing

Copy to:
State
ASLB
Parties
Petitioners

Note: Attachment 14 must be completed and approved with this notice.

Attachment 14
DLOP 228

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: (Responsible Supervisor for Monthly FR Notice)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION (REPEAT OF INDIVIDUAL NOTICE)

Licensee: Docket No. 50-

Facility: Location:

Date of application for amendment:

Brief description of amendment:

Date of issuance: Effective date:

Amendment No.: Facility Operating License No:

Date of individual notice in Federal Register: (date) (page)

(Branch Chief)

cc: Project Manager
Licensing Assistant

SAMPLE MEMORANDUM REQUESTING
INPUT INTO MONTHLY FR NOTICE

MEMORANDUM FOR: (Responsible supervisor for Monthly FR Notice)

FROM: (Branch Chief)

SUBJECT: REQUEST FOR PUBLICATION IN MONTHLY FR NOTICE - NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

Licensee: Docket No.

Facility: Location:

Date of application for amendment:

Brief description of amendment:

Date of Issuance: Effective Date:

Amendment No. Facility Operating License No:

Amendment revised the (Technical Specifications)(license) (both).

Press release issued requesting comments as to proposed no significant hazards consideration: (Yes) (No)

Comments received: (Yes)(No). Source: (public) (State)

The Commission's related evaluation is contained in a (letter dated) (Safety Evaluation) (Environmental Impact Appraisal).

Attorney for licensee:

Local public document room location:

(Branch Chief)

cc: Project Manager
Licensing Assistant

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

Trammell

Docket No. 50-344

Mr. Bart D. Withers
Vice President Nuclear
Portland General Electric Company
121 S.W. Salmon Street
Portland, Oregon 97204

Dear Mr. Withers:

The Commission has issued the enclosed Amendment No. to Facility Operating License No. NPF-1 for the Trojan Nuclear Plant. The amendment consists of changes to the Technical Specifications in response to your application dated _____.

The amendment _____
_____
_____
_____.

Copies of the Safety Evaluation and the Notice of Issuance are also enclosed.

Sincerely,

Charles M. Trammell, III
Project Manager
Operating Reactors Branch #3
Division of Licensing

Enclosures:
1. Amendment No. to NPF-1
2. Safety Evaluation
3. Notice of Issuance

cc w/enclosures:
See next page

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

PORTLAND GENERAL ELECTRIC COMPANY

THE CITY OF EUGENE, OREGON

PACIFIC POWER AND LIGHT COMPANY

DOCKET NO. 50-344

TROJAN NUCLEAR PLANT

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-1

1. The Nuclear Regulatory Commission (the Commission) has found that:

   A. The application for amendment by Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licensee) dated _____ complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations set forth in 10 CFR Chapter I;

   B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;

   C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;

   D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and

   E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, the license is amended by changes to the Technical Specifications as indicated in the attachment to this license amendment, and paragraph 2.C.(2) of Facility Operating License No. NPF-1 is hereby amended to read as follows:

   (2) Technical Specifications

   The Technical Specifications contained in Appendices A and B, as revised through Amendment No. , are hereby incorporated in the license. The licensee shall operate the facility in accordance with the Technical Specifications, except where otherwise stated in specific license conditions.

3. This license amendment is effective as of the date of its issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Robert A. Clark, Chief
Operating Reactors Branch #3
Division of Licensing

Attachment:
Changes to the Technical
Specifications

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT

AMENDMENT NO. TO FACILITY OPERATING LICENSE NO. NPF-1

DOCKET NO. 50-344

Revise Appendix A as follows:

Remove Pages	Insert Pages

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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

RELATED TO AMENDMENT NO. TO FACILITY OPERATING LICENSE NO. NPF-1

PORTLAND GENERAL ELECTRIC COMPANY

THE CITY OF EUGENE, OREGON

PACIFIC POWER AND LIGHT COMPANY

TROJAN NUCLEAR PLANT

DOCKET NO. 50-344

Introduction

By letter dated _____, Portland General Electric Company, et al., (the licensee or PGE) requested an amendment to Facility Operating License No. NPF-1 for operation of the Trojan Nuclear Plant in Columbia County, Oregon.

- -

Environmental Consideration

We have determined that the amendment does not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. Having made this determination, we have further concluded that the amendment involves an action which is insignificant from the standpoint of environmental impact and, pursuant to 10 CFR §51.5(d)(4), that an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

Conclusion

We have concluded, based on the considerations discussed above, that: (1) because the amendment does not involve a significant increase in the probability or consequences of accidents previously considered and does not involve a significant decrease in a safety margin, the amendment does not involve a significant hazards consideration, (2) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, and (3) such activities will be conducted in compliance with the Commission's regulations and the issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public.

Date:

Principal Contributors:

7590-01

UNITED STATES NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-344

PORTLAND GENERAL ELECTRIC COMPANY, ET AL.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

The U. S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. to Facility Operating License No. NPF-1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licensees), which revised the Technical Specifications for operation of the Trojan Nuclear Plant (the facility) located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

The amendment (use second paragraph of letter)

_____

_____

_____.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated _____, (2) Amendment No. to License No. NPF-1 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document room located at the Multnomah County Library, Social Science and Science Department, 801 S.W. 10th Avenue, Portland, Oregon 97205. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this

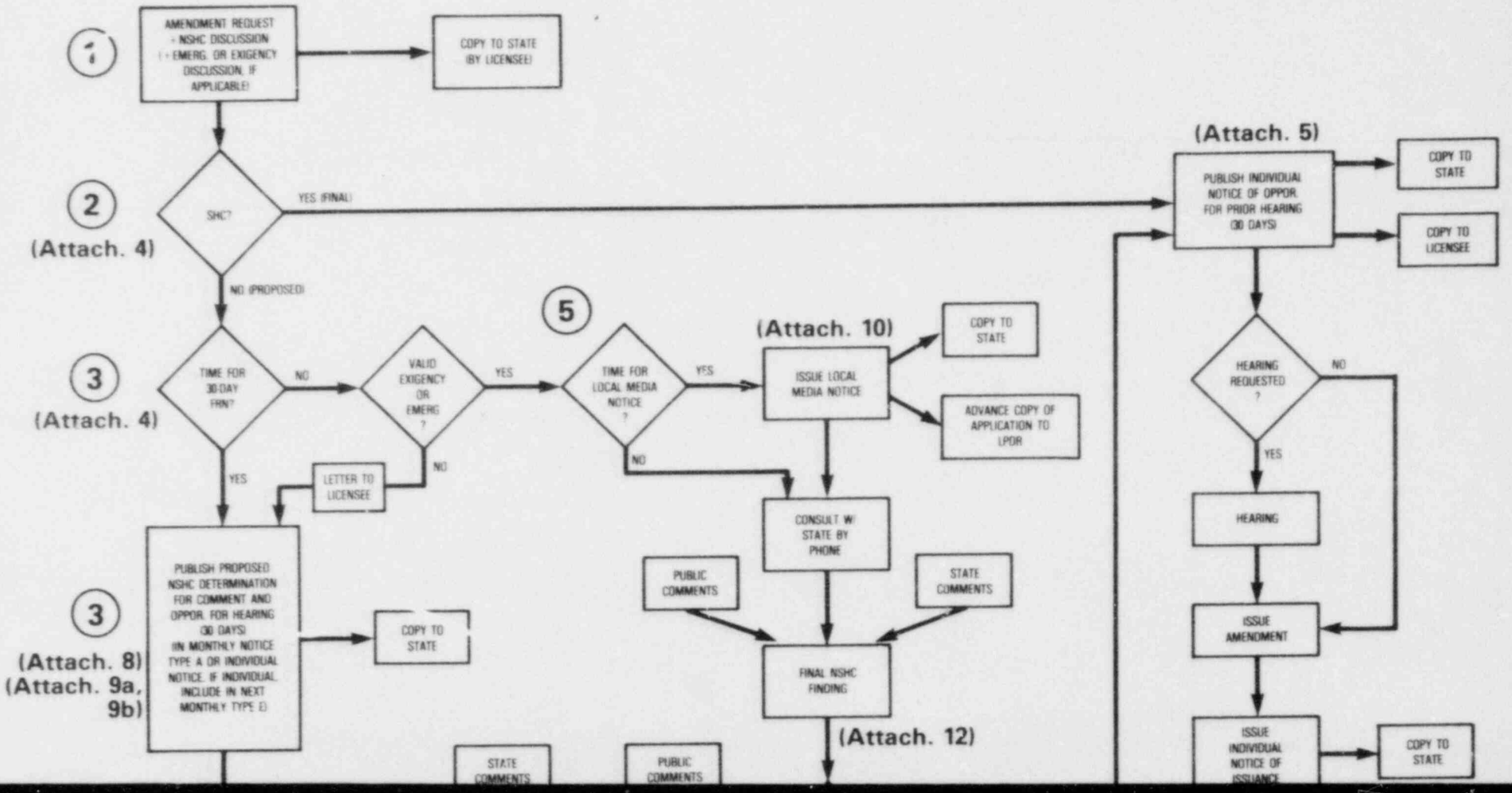
FOR THE NUCLEAR REGULATORY COMMISSION

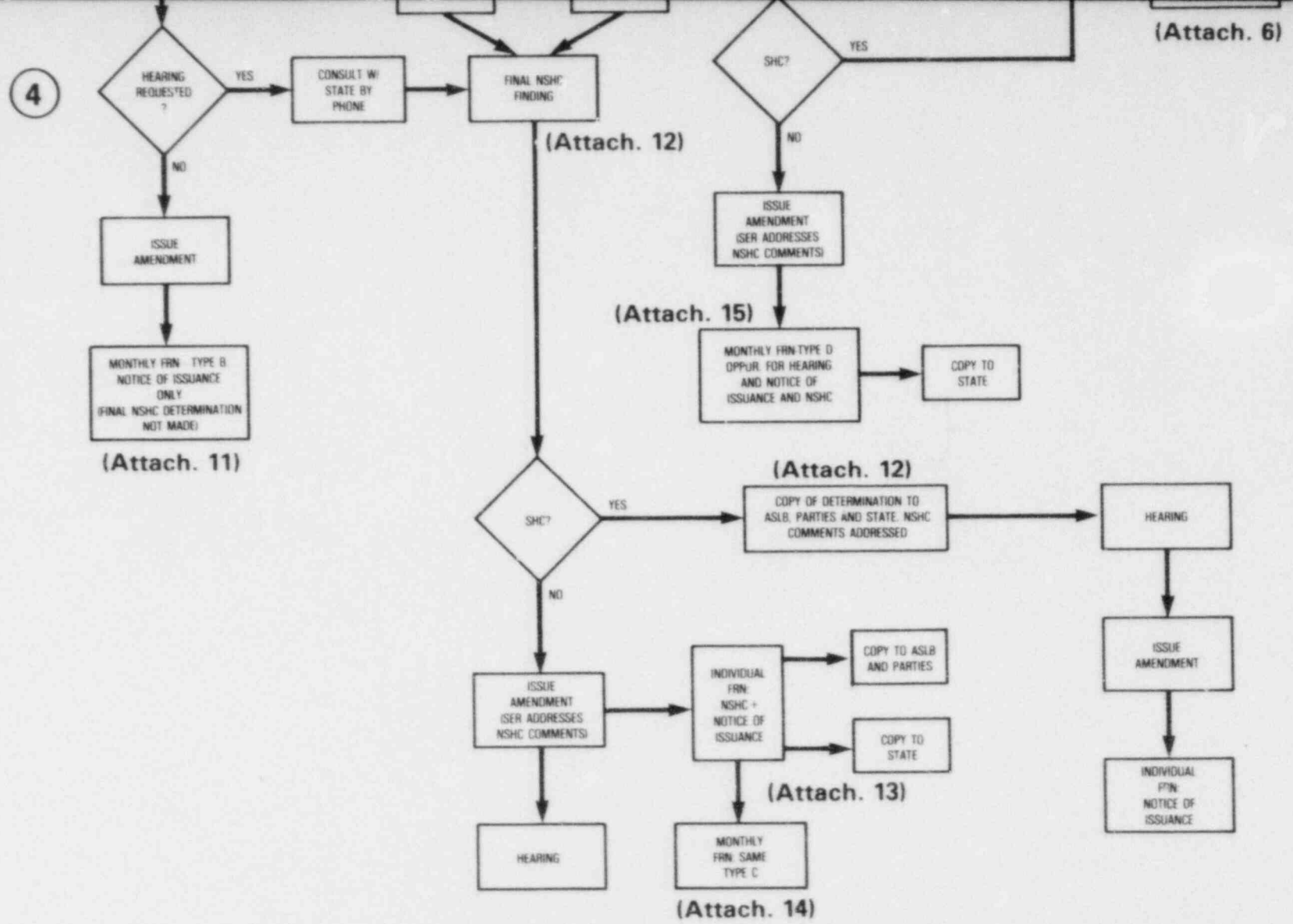
Robert A. Clark, Chief
Operating Reactors Branch #3
Division of Licensing

Attachment 3
DLOP 228

FLOW DIAGRAM

STATE CONSULTATION, NOTICING AND NO SIGNIFICANT HAZARDS CONSIDERATION PROCEDURES





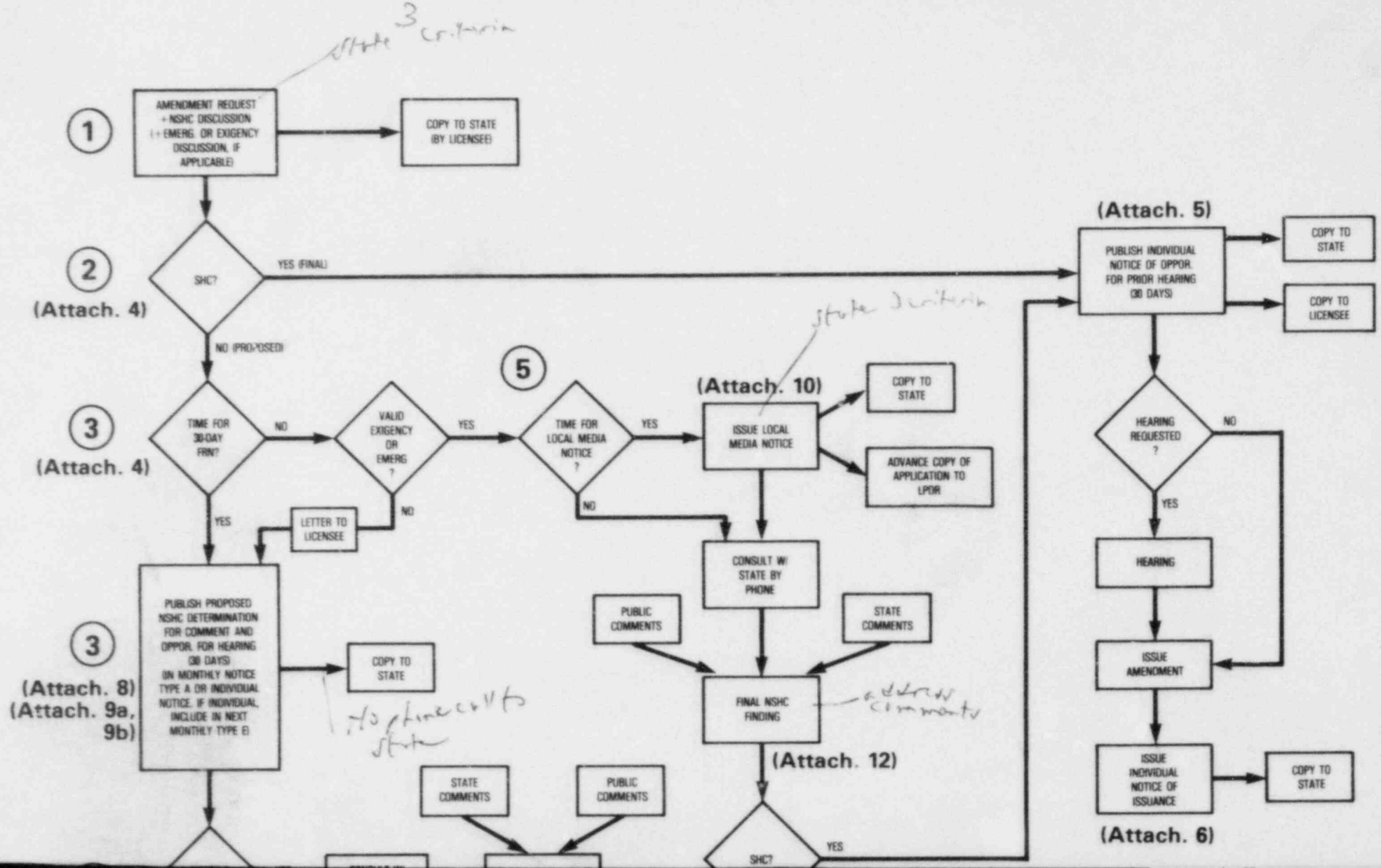
8604160244-01

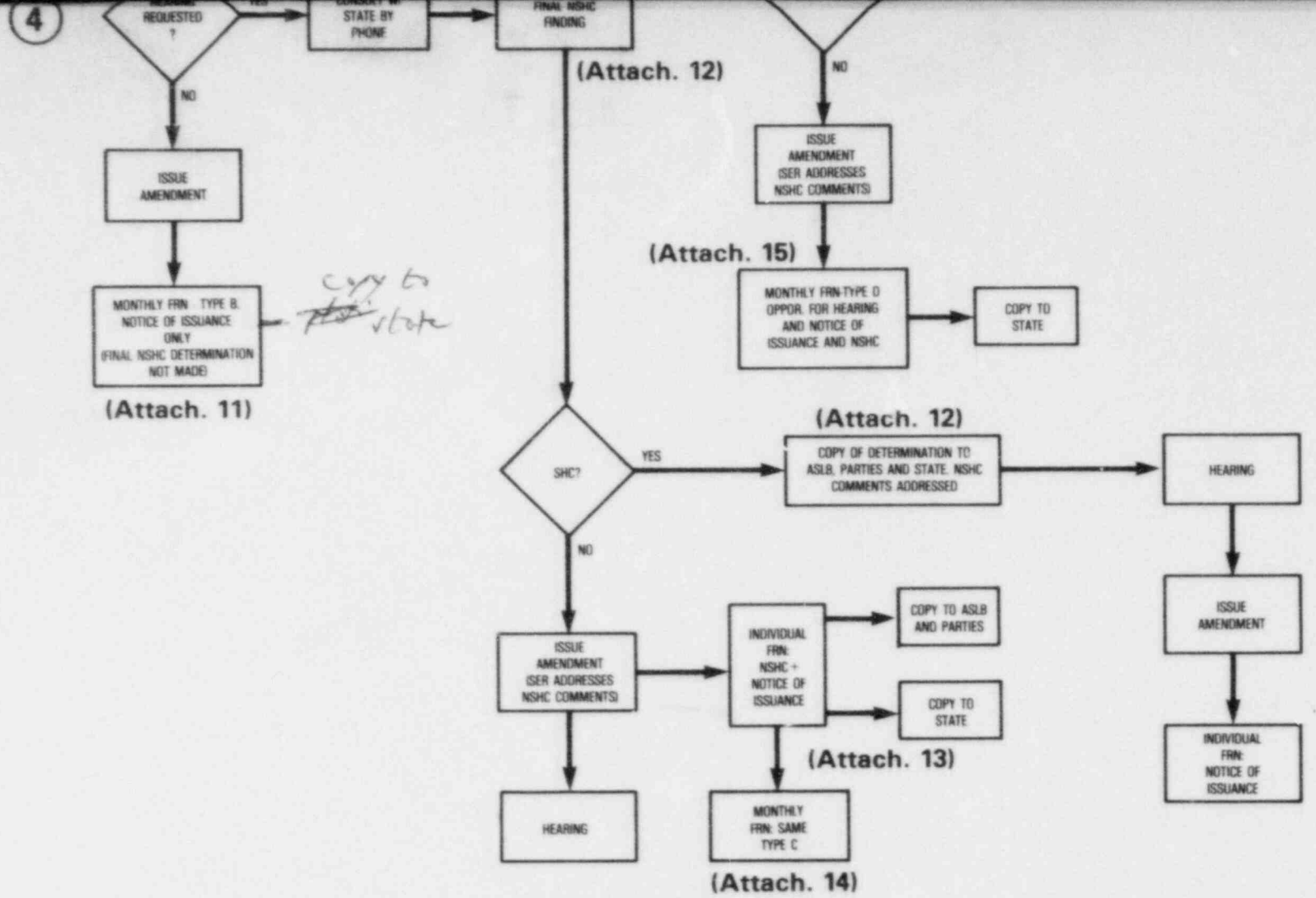
Attachment 3
DLOP 228

Attachment 3
DLOP 228

FLOW DIAGRAM

STATE CONSULTATION, NOTICING AND NO SIGNIFICANT HAZARDS CONSIDERATION PROCEDURES





8604160244-02

Attachment 3
DLOP 228

TO: Recipients of PR-50 (48 FR 14864)

FROM: Docketing and Service Branch

RE: Comment Number 21

Number 21 in the above proposed rule was mistakenly used twice. The comment coded 21 from Lowenstein, Newman, Reis & Axelrad will remain number 21. The comment from Portland General Electric Company has been changed to number 22.

6/27/83

DOCKET NUMBER
PROPOSED RULE PR -50 (22)
(48 FR 14864) (27)

Portland General Electric Company

Bart D. Withers Vice President

June 15, 1983

Secretary of the Commission
Attention: Docketing and Service Branch
U. S. Nuclear Regulatory Commission
Washington DC 20555

Dear Sir:

Standards for Determining Whether License
Amendments Involve No Significant Hazards Consideration

On April 6, 1983, the NRC published an interim final rule in the Federal Register implementing standards for determining whether license amendments involve no significant hazards consideration. PGE has the following comments for your consideration:

1. The interim final rule went into effect too soon, not allowing for a sufficient comment period and not allowing time for experience under the new rule to see if its provisions are effective.

2. It is not clear if the emergency procedures apply for a plant which is shut down and cannot start up without a license amendment being issued. It is not perceived to be the intent of the rule to penalize such plants, and, therefore, the emergency provisions should apply in such cases.

3. The categories of derating or shutdown for an amendment to be considered as an emergency amendment are too narrow. Other equally justifiable circumstances that could improve public health and safety may warrant emergency action.

4. In general, the requirement to prenotice all license amendments is unduly restrictive and unnecessary. It was not the intent of the legislation to delay even routine license amendments 30 days.

Sincerely,

Bart D. Withers
Vice President
Nuclear

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1 p.

PKG
Dupe

c: Mr. Lynn Frank, Director
State of Oregon
Department of Energy

Acknowledged by card 6/21/83 PD