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Jones

August 15, 1983

MEMORANDUM FOR: Darrell G. Eisenhut, Director, Division of Licensing,
Office of Nuclear Reactor Regulation

FROM: Richard C. Lewis, Director, Division of Project and
Resident Programs

SUBJECT: SHOLLY AMENDMENT IMPLEMENTATION PROCEDURES

Region II has completed a review of the procedures which NRR is going to use for implementation of the Sholly amendment requirements. Our comments are as follows:

In each instance in which the sample Federal Register notices are providing notice of the right to request a hearing, the notices appear misleading at best. The problem sentence in each notice states "By (thirty days after publication in the FR), the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene." In our opinion, this language leaves the clear impression that an interested person only has the right to intervene if the licensee requests a hearing and it does not sufficiently inform an interested person of the right to request a hearing. 10 CFR 2.714 clearly states that the interested party has the right to intervene and a right to request a hearing. It appears the solution to the above problem is to revise the sentence to read "...and who wishes to participate as a party in this proceeding or who wishes to request a hearing on the issuance of the amendment must file a written petition to intervene or a written request for a hearing."

Secondly, the procedures indicate that, in exigent circumstances, a press release seeking public comments on the no significant hazards determination will be issued. I do not believe that a press release complies with the new 10 CFR 51.91 (a) (6) (i). That provision states that the Commission will, in exigent circumstances, use the local media to inform the public of the proposed action. Since press releases may or may not be used by the local media, there is no assurance that the agency would be complying with its own regulations by simply issuing a press release. It appears it would be more appropriate to both issue a press release and purchase an advertisement in the legal notice section of the local newspaper. I believe that the procedures as they now stand could subject amendments to challenge due to improper noticing.

We appreciate the opportunity to comment on the proposed procedures and hope these comments are of benefit to you.

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