AA61-2 PDR

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

MAY 10 1983

NOTE TO: Ed Christenbury

In accordance with practice established by OELD in 1979, ELD review of license amendments has been limited to the language of the notice and the license amendment, looking into the Staff SER only as requested by NRR management.

With the changes resulting from the "Sholly" amendments, I anticipate that for a period of time while we become more familiar with the application of the new rules, it would be desirable to have ELD's assistance and comment on the adequacy of the Staff documents supporting our conclusions on the "no significant hazards considerations" determination. We recognize that each case attorney and assistant chief hearing counsel may have particular comments, but it would help us to develop our procedures more effectively if these comments could be channeled through a single ELD point of contact.

We look forward to hearing your views on this matter which is due to become effective in early May 1983.

Darrell G. Eisenhut

cc: H. Denton
E. Case
J. Scinto
R. Purple
T. Dorian
DL/ADs

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

May 2, 1983

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.

DS 10
add: Thomas J. Saporito
9604 MD 6

Sincerely,

Susan L. Hiatt

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

~~8305180404~~

8pp

5/13/83
PD

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ROBERT LOWENSTEIN
OF COUNSEL

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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Add: Thomas J. Sullivan
96 comments

5/13/83
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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 generatic[illegible]ld result unless the license amendment is timely issued. [illegible]terpreted, the provision would not apply to an amendm[illegible]eded prior to return to power by a plant which has not b[illegible]n 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,

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.

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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.

-50 (19)

(48FR 14864)

11 May 1983
718-A Iredell
Durham NC 27705

Secretary USNRC Washington DC 20555
Attn Docketing and Service
Re 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 inclusiong 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 all possible 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-hazrd narrowly & use that.

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SEACOAST ANTI-POLLUTION LEAGUE
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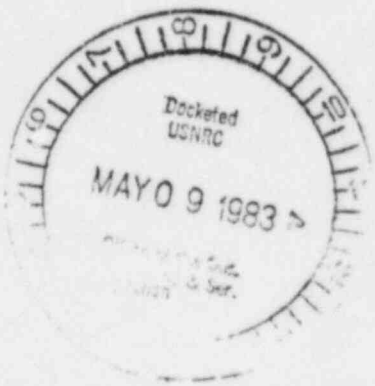
PORTSMOUTH NH 03801 06AM

Western Union Mailgram

4-0332098126 05/06/83 ICS IPMMTZZ CSP WSHB
6034315089 MGM TDMT PORTSMOUTH NH 139 05-06 1259P EST

PROPOSED RULE PR-50 (11)
(48FR 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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att: Thomas D. Barron
9560 Mail

5/13/83
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Docketing & Services Branch

SUBJECT: Comments on proposed rule 10CFR50 re stds for determining whether license amends involve no significant hazards considerations.Rule vague & unsatisfactory.

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The Indiana Sassafras Audubon Society

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

DOCKET NUMBER PROPOSED RULE PR-50 (10)
48FR14864

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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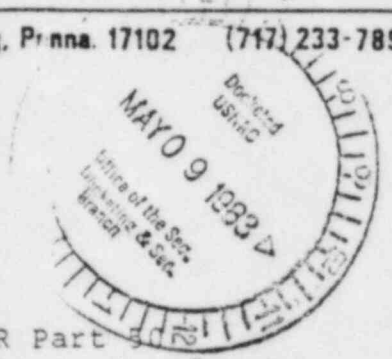
add Thomas J Dorse
4664 MNBB

5/13/83 PD

TMIA: THREE MILE ISLAND ALERT, INC.
315 Peffer St., Harrisburg, Penna. 17102 (717) 233-7897

May 5, 1983

PROPOSED RULE PR-50 (51)
(48 FR 14864)



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

Re: Interim Final Rule Comments -- 10 CFR Part 50
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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add Thomas J. Dolan
9604 MNBB

5/9/83
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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

Atomic Industrial Forum, Inc.
7101 Wisconsin Avenue
Washington, D.C. 20014
Telephone: (301) 654-9260
TWX 7108249602 ATOMIC FOR DC

Change required by postal regulations:
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Bethesda, Maryland 20814

AIF

PROPOSED RULE PR-50 (8)
(48FR14864)

May 6, 1983

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

DS 10
add Thomas D Barnes
4604 MNBB

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

---

*"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).

(4)

DOCKET NUMBER
PROPOSED RULE PR-50
(48FR14873)

STONE & WEBSTER ENGINEERING CORPORATION

245 SUMMER STREET, BOSTON, MASSACHUSETTS

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

May 4, 1983

'83 MAY -6 A10:42

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

DS 10
cc: Adm. Thomas P. Barnes
1604 MNPL

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5/13/83
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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

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 at "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 dc 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 saf .y. 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

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Dated: May 6, 1983

JOHN J. KEARNEY, Senior Vice President

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PR-50 (48FR14864) (13)

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.

DS10
add: Thomas D. Barlow
9664 MNBB

5/13/83 PD

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

DS10
add Thomas L. Sullivan, 9604 MNBB 5/13/83 PD

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

PROPOSED RULE PR-50 (48FR14864) (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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add Thomas J Sarno
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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)
(48FR14864)

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.

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add Thomas G. Ducan
9604 MNBB

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
L. J. Klement
STP RMS

(5)

PROPOSED RULE PR-50
(48 FR 14864)

LAW OFFICES OF
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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

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all Thomas S. Larson, 9604 MNAB 5/13/83
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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 effluents 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,

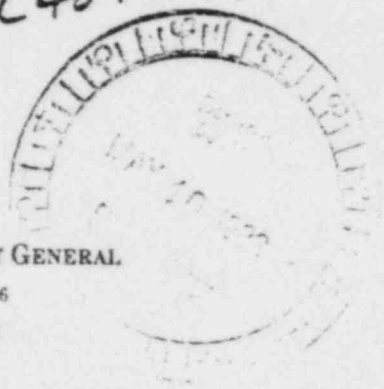
J. Michael McGarry /JCS

J. Michael McGarry
Jeb C. Sanford

DEBEVOISE & LIBERMAN

PR-50 (14)
(48 FR 14864)

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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add Thomas J. Bacon
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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 Feueral 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,

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Attorney General

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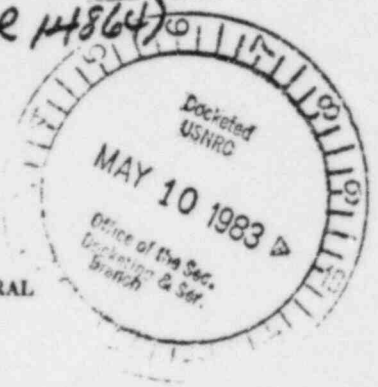
(15)

PROPOSED RULE PR -50
(48 FR 14864)

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.

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add: Thomas G. Dorian
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Acknowledged by card 5/13/83 PD

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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PROPOSED RULE PR-50 (16)
(48 FR 14864)

YANKEE ATOMIC ELECTRIC COMPANY

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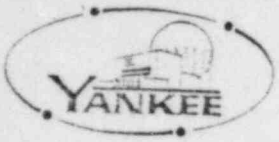

1671 Worcester Road, Framingham, Massachusetts 01701

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

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add Thomas D. Barrow
9604 MNBB

Acknowledged by card. 5/13/83

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)