

September 23, 1981

MEMORANDUM FOR: E. Kevin Cornell, Deputy Executive Director for Operations
FROM: Howard K. Shapar, Executive Legal Director
SUBJECT: COMPARISON OF INTERIM OPERATING LICENSE PROVISIONS IN S.1207, AS REPORTED, AND H.R.4255

This responds to your request for a comparison of the interim operating license (IOL) provisions in the House and Senate versions of the NRC authorization bill. The objective of the IOL provisions in each of these bills is to authorize the Commission to permit fuel loading, testing and operation at a specific power level pending final action by the Commission on the application for the final OL for the facility. Under each bill, however, the initial petition would be limited to power levels not to exceed 5 per cent of the facility's rated full power.

Each bill would revive Section 192, which was added to the Atomic Energy Act in 1972, (to accommodate the expected need for power from plants which were impacted by judicial decisions interpreting NEPA) but which expired on October 30, 1973, as the basis for the authority. The Senate bill would make substantial revisions to Section 192 to conform its language to the situation now being faced with impacted operating license proceedings. The House bill would, for the most part, preserve Section 192 ("Temporary Operating License"), as enacted, and, therefore, has less new legislative content than does S.1207.

Each bill, if enacted, would provide legislative authority which is responsive to the Commission's legislative request of March 1981. Indeed each would authorize the Commission to permit the eventual operation, on an interim basis, up to full power. The Commission's legislative request limited the authority to operation at five per cent. On balance, it would appear that the approach taken in S.1207 is preferable for the following significant reasons:

S.1207 would substantively amend Section 192 while H.R.4255 is tied to the authorization of appropriated funds for FYs 1982 and 1983. FY 1983 would expire on October 1, 1983, which is prior to the December 31, 1983, expiration date requested by the Commission and provided for in S.1207.

H.R.4255 preserves the hearing provided for in Section 192 for IOLs, but provides that they may be issued in advance of the conduct or completion of any such hearing. S.1207 removes the provision for a hearing on such licenses from Section 192. Retention of the hearing provision under the H.R.4255 approach could lead to unnecessary ambiguity and controversy (e.g. whether a hearing should be held on an IOL prior to its issuance).

On the other hand, H.R.4255 includes one feature which would appear to be more favorable than the corresponding provision in S.1207. S.1207, as reported (p. 7, line 15) literally requires the availability of the staff's final SER on the

application as one of the prerequisites for the filing of a petition for an

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IOL. Section 192 language (which is preserved by H.R.4255) refers only to "the safety evaluation of the application" by the staff.

A significant potential problem common to both bills is that each would allow the petition to be filed only after certain other reports are filed (e.g., the ACRO report, the SER and the FES). This means that the time (about 60-90 days) for procedural requirements (e.g. public notice, comment, authorization) which must precede an IOL authorization could begin to run only after the prerequisites to the filing of the petition have been satisfied. Thus, under each bill the effect of the time for procedural purposes on the timing of the Commission's authorization for the issuance of an IOL could be minimized if the legislation provided that the prerequisites had to be satisfied before IOL issuance instead of before the filing of a petition for an IOL.

Other differences between S.1207, as reported, and H.R.4255 are:

S.1207

H.R.4255

. Allows any person to file affidavits in support of or in opposition to the petition for an IOL.

. The participants in an IOL proceeding would apparently be limited to the parties to the hearing on the final OL.

. Includes, as a fourth prerequisite to the filing of a petition for an IOL, the filing of "a State, local or utility emergency preparedness plan for the facility."

. Has no corresponding provision; however it provides in Section 8 that the NRC may issue a temporary OL in the absence of a FEMA-approved plan.

. Includes as a Commission finding for the authorization of an IOL that "denial of such... license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the interim... license, and the date on which a final operating license for such facility would otherwise issue..."

. No corresponding provision.

. Provides that the initial petition for IOLs as well as subsequent petitions for amendment thereto, shall each be the subject of 30 days prior notice in the Federal Register, as well as in other publications which the Commission deems appropriate to give reasonable notice to persons who might have a potential interest.

. No corresponding provision. Section 192 language (preserved by H.R.4255) provides for the filing of affidavits in support of or opposition to the petition by parties to the final OL within 14 days after the filing of a petition for an IOL or within additional time not to exceed 10 days. Thereafter, the Commission is directed to hold a hearing after 10 days notice and publication in the Fed. Reg. on any such petition and supporting material. As previously noted, H.R.4255 provides that the IOL may be issued in advance of the conduct or the completion of this hearing. Presumably, though, the

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notice called for by Section 192 would have to be given. Section 12(b) of H.R.4255 could be interpreted, however, as contemplating the prior notice procedures only on the initial petition for an IOL and not on the subsequent petitions for amendments to the IOL. There is, however, no legislative history which is available on this point at this time.

. Final orders of the Commission authorizing the issuance of IOLs must be sent to the congressional oversight committees.

. No corresponding provision.

. Provides that any number of the presiding ASLB in the final operating license hearing or any party to that hearing shall promptly notify the Commission of any information in that hearing that the terms and conditions of the IOL are not being met or that they are not adequate.

. No corresponding provision.

. Directs the Commission to adopt administrative remedies it deems appropriate to minimize the need for issuance of IOLs.

. No corresponding provision.

Original signed
by H. K. Shapar

Howard K. Shapar
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