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

January 6, 1982

MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne
Commissioner Roberts

FROM: LB Leonard Bickwit, Jr., General Counsel

SUBJECT: EXPEDITIOUS CONDUCT OF REQUESTED LICENSE AMENDMENT HEARINGS

This Office has been asked to suggest procedures that could be used for the expeditious conduct of requested hearings held after issuance of a license amendment involving no significant hazards consideration. 1/

Under section 189a. of the Atomic Energy Act of 1954, as amended, ("Act") an interested person raising genuine issues of material fact has a statutory right to a formal hearing on an application for a facility license amendment. However, longstanding Commission interpretation has been that the hearing may take place after the amendment has issued if the Commission determines that the amendment involves no significant hazards consideration. As a general matter requested hearings in facility licensing cases are required by section 189a. to be formal adjudicatory hearings. There is nothing in the statute or legislative history which indicates that hearings on amendments involving no significant hazards consideration need not be formal as in the usual case. However, the nature

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1/ Memoranda to General Counsel from Commissioner Gil[illegible] dated December 5, 1980, to General Counsel from Cha[illegible] Ahearne, dated December 8, 1980, to General Counsel [illegible] Chilk, dated June 12, 1981. These memoranda related generally to then current plans to seek Supreme Court review in Sholly v. NRC. Since then the Supreme Court has taken review and legislation reversing Sholly has been introduced and has advanced in the Congress. This memorandum assumes that the Commission's interpretation of section 189a. of the Atomic Energy Act will prevail, either by legislation or Supreme Court reversal of the Court of Appeals in Sholly.

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of these amendments suggests that they should in theory be far less likely than CPs, OLs, and other amendments to present serious technical safety issues. Thus the range of procedural devices to obviate formal hearings that are generally available to the Commission (summary disposition, particularization of contentions and bases, raised contention thresholds, etc.) would seem to have a better chance of success here. The focus of discussion below is not on the likely success of these "traditional" measures but rather on special measures that might be taken just to deal with these types of amendments.

1. Expedited Hearings

The Commission could issue special procedural rules governing hearings on amendments involving no significant hazards consideration that would eliminate discovery, and require that, unless the presiding officer orders otherwise, the hearings commence within a fixed time. Production of documents under the Freedom of Information Act (FOIA) would still be available.

This proposal would probably speed up the hearing process. However, staff resources may be strained in order to prepare testimony, etc. on an expedited basis. Since the amendment is presumed to continue in effect during the hearing, one may question whether any special allocation of resources that would be necessary for an expedited proceeding would be warranted. There is no statutory right to discovery and its elimination in these cases, as well as the time limit, could be justified on the theory that only very minor technical issues would be involved.

2. Hybrid Hearings

The Commission could use "no significant hazards consideration" amendment cases as vehicles to experiment with "hybrid" hearings -- i.e. an initial round of informal, legislative type hearings and a final round of formal hearings on specific, disputed factual issues that could not be adequately resolved using the legislative hearing format. The hearings would not be on the critical path to amendment issuance or plant operation, and so no substantial adverse consequences would result if the hybrid hearings took more time than straight adjudicatory hearings. Hybrid hearings, if properly structured and conducted, would probably be consistent with section 189a. of the Atomic Energy Act.

3. Presiding Officer

The Commission could appoint a single Administrative Law Judge rather than a three member atomic safety and licensing board (ASLB) to preside over the hearing.

This would have no impact on the parties' resources or time required to complete the hearing. Cases could suffer from the lack of a technically trained presiding officer. However, the proposal would free up ASLB technical members for other more complex cases.

4. Commission Review of Contentions

The rules could be amended to require that contentions and related material (bases, etc.) must be included in the request for hearing (as opposed to later before the prehearing conference) and that the petitioner's standing and contentions will be reviewed by the Commission itself.

The earlier filing of contentions would expedite the process somewhat. Commission review of contentions would result in greater Commission control over the hearing scope, but the actual impact on the hearing is speculative.

5. CP Extensions

Some of the most extensive hearings that have been held on facility amendments involving no significant hazards consideration have involved CP extension requests. It might be worthwhile to re-examine the Act to determine whether the scope of these proceedings can be further narrowed so as to focus solely on the adequacy of the reasons asserted by the utility to constitute good cause. Under current practice an intervenor may also raise issues arising from the reasons advanced by the utility that cannot be put off to the OL review stage. See Northern Indiana Public Service Company (Bailly Generating Station Nuclear 1), ALAB-619, 12 NRC 558 (1980). The Act is silent on the scope of a CP extension proceeding and current law on scope is essentially Commission-made. This suggests that there may be some latitude for change. A significant reduction in the hearing scope could both reduce the likelihood that the hearings would be needed and expedite the conduct of those hearings that are held.

cc: OPE
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