AA61-2 PDR

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

September 13, 1982

MEMORANDUM FOR: Guy H. Cunningham, III
Executive Director for Operations

FROM: Martin G. Malsch, Deputy General Counsel

SUBJECT: COMMENTS ON OELD DRAFT REGULATIONS TO IMPLEMENT NEW LICENSING LEGISLATION

We have reviewed your August 16 proposed Commission paper and believe that your effort in this regard has been excellent. The only areas where we have substantive comment follow.

In the proposed rules implementing the "new authority" to issue temporary operating licenses, we would delete proposed section 2.308 since it does not appear to have a clear reference point. If that section is intended to indicate that the Commission will make every effort to expedite licensing in order to avoid temporary licensing, a specific section in the regulations to that effect seems unnecessary. If it means something else, then we believe the regulations should spell it out in greater detail. In addition, we believe that the regulations in 2.305 should set forth more clearly how the Commission intends to resolve opposing factual and legal disputes about the need for the temporary operating license. While we recognize that the standards for issuing a temporary operating license are set out clearly in proposed section 50.57(d)(7), the proposed changes to Part 2 do not set forth whether the Commission intends to resolve these disputes in camera, in a public meeting, through a process of informal briefing by the affected persons, or some other mechanism. Finally, we urge

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specific changes to pages 2, 7, and 11 of Enclosure 3 (see attached).

With these changes we would endorse the proposal.

Attachment:
Enclosure 3 (pp. 2,7,11)

cc: EDO

SUPPLEMENTARY INFORMATION:

Introduction

On _____, Congress passed Public Law _____ to authorize fiscal year 1982 and 1983 appropriations for NRC, and for other purposes. Among other things, the legislation directs NRC to promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards consideration, (b) criteria for providing or, in an emergency, for dispensing with prior notice and opportunity for public comment on such a determination, and (c) procedures for consultation on such a determination with the State in which the facility of the licensee requesting the amendment is located.

Proposed regulations to specify standards for determining whether amendments to operating licenses or construction permits for commercial power reactors (or certain other facilities licensed under §§ 50.21(b) and 50.22) involve no significant hazards consideration (item (a) above) were published for comment in the Federal Register by the Commission on March 28, 1980 (45 FR 20491). Since the Commission rarely issues amendments to construction permits and has never issued a construction permit involving a significant hazards consideration, it has decided that these standards should not apply to amendments to construction permits. This is in keeping with the legislation which applies only to operating license amendments.

However, NRC believed that legislation was needed to change the result reached by the Court in Sholly because of the implications of the requirement that NRC grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. Since most requested license amendments involve no significant hazards consideration and are routine in nature, hearings on such amendments could result in unnecessary disruption or delay in the operations of nuclear power plants and could impose unnecessary regulatory burdens upon NRC and the nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S.912) that would expressly authorize NRC to issue a license amendment involving no significant hazards consideration before holding a hearing requested by an interested person.

After considering two similar bills, H.R.2330 and S.1207, Congress passed Public Law _____. Specifically, section 12 of that law amends section 189a. of the Act by adding the following with respect to license amendments involving no significant hazards consideration:

> "(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

meaning of "no significant hazards consideration." These standards would have applied to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permits, to whatever extent considered appropriate. As mentir d before, the Commission now believes that these standards should not be applied to amendments to construction permits, because ~~construction permits do not involve a significant hazards consideration,~~ there are so few of them and has modified the proposed rule accordingly.

In the statement of considerations which accompanied the proposed rule, the Commission explained that it did not agree with the petitioner's proposed standards because of the limitation to "major credible reactor accidents" and the failure to include accidents of a type different from those previously evaluated.

During the past several years the Commission's staff has been guided in reaching its determinations with respect to "no significant hazards consideration" by staff standards and examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These have proven useful to the staff, and the Commission employed them in developing the proposed rule. The notice of proposed rulemaking contained revised standards to be incorporated into Part 50, and the statement of considerations contained examples of amendments to an operating license that are considered likely and not likely to involve a significant hazards consideration. The three standards proposed were: whether the license amendment would: (1) involve a significant increase in

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555

September 10, 1982

MEMORANDUM TO: Guy H. Cunningham, III
Executive Legal Director

FROM: B. Paul Cotter, Jr. BPC
Chief Administrative Judge

SUBJECT: TEMPORARY OPERATING LICENSE AUTHORITY AND THE "SHOLLY AMENDMENT"

Subject proposed regulation implementing the Commission's temporary operating licensing authority and the "Sholly Amendment" will have little impact on the activities of the ASLBP. Normally, pending operating licensing proceedings are scheduled to be completed sufficiently in advance of the applicants' scheduled construction completion dates to permit final Commission action prior to the time when fuel loading and low-power operation would be feasible. Consequently, there should be relatively few cases in which the issuance of a temporary operating license would be desirable or useful, and few occasions when licensing boards would become involved in monitoring compliance with, or the adequacy of conditions imposed on such a license.

Nevertheless, I am concerned that the procedures implementing the temporary operating license authority may cause confusion and disruption, and most importantly, delay, in operating license proceedings. Applicants presently have the opportunity under § 50.57 to petition the licensing board to authorize issuance of a low-power license in advance of completion of the full operating license proceeding. Indeed, they frequently do so once litigation of safety-related contentions has been completed. The proposed regulation concerning temporary operating license authority creates what would seem to be an unnecessary parallel, or alternative, procedure. It is difficult to perceive what will be gained in terms of speed and efficiency by permitting applicants to petition the Commission directly for a low-power license, particularly since the proposed regulations require both that all parties to the final operating license proceeding be served with copies of the petition, and that the licensing board bring to the attention of the Commission any information it may receive bearing upon the adequacy of the conditions imposed by the Commission on the issuance of such a license. I feel certain that unless procedures for the disposition of petitions for temporary operating licenses make adequate provision for consideration of the views of all parties to the permanent license proceedings, the benefits of exemption of the process from § 189 a. hearing requirements will be nullified by litigation, particularly since the pending bill specifically authorizes judicial review.

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Under current procedure, the denial of a petition for a low-power license by a licensing board may be appealed. Ultimately, therefore, an applicant may receive the type of Commission review provided for in the proposed regulation. While this process may be slightly slower than the proposed procedures, it also assures that issues bearing on the propriety of issuance of the low-power license will be fully aired by the parties and considered by the licensing board and the staff prior to their submission to the Commission.

This latter point is to me the most persuasive. If the Commission must make the threshhold determination, it will have to resolve the petitions of the parties set forth in multiple filings. The time required for all Commissioners to agree on the language resolving such issues would be burdensome on individual Commissioners vis a vis other duties as well as external pressures to make a decision. If the issues are first digested and resolved by a licensing board within a specified time limit, the Commission would then have the option of affirming board decisions with which they agreed--a substantially less time consuming and less burdensome decision.

Accordingly, I would recommend that the proposed regulation provide that a motion for a temporary operating license be filed with the board before whom the final operating license proceeding is pending. If the Commission is concerned that such a procedure will engender delay, it might provide in the regulation that the board is to rule within a specified time-period, say 30 or 60 days, and that the decision of the board is to be certified directly to the Commission for review.

cc: Leonard Bickwit, OGC
Harold R. Denton, NRR
Alan S. Rosenthal, ASLAP