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CC: Dircks
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AFFIRMATION

RESPONSE SHEET

L.G. Cunningham ED

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TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: CHAIRMAN PALLADINO

SUBJECT: SECY-83-16B - REVISED REGULATIONS TO IMPLEMENT LEGISLATION ON (1) TEMPORARY OPERATING LICENSING AUTHORITY AND (2) NO SIGNIFICANT HAZARDS CONSIDERATION (THE "SHOLLY AMENDMENT") - SECY-83-16 AND 83-16A

APPROVED ✓ DISAPPROVED _____ ABSTAIN _____

NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS: *as modified*

*WQ
T. Deenan
Sholly files*

N. Palladino
SIGNATURE

3/9/83
DATE

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SECRETARIAT NOTE: PLEASE ALSO RESPOND TO AND/OR COMMENT ON OGC/OPE MEMORANDUM IF ONE HAS BEEN ISSUED ON THIS PAPER.

clearly contemplate that the procedural framework is both useful and needed to govern the Commission's actions in exercising the new authority and to preserve for the public its right to participate in licensing decisions.

Proposed Subpart C to 10 C.F.R. Part 2 - "Procedures Under Section 192 for the Issuance of Temporary Operating Licenses."

Subpart C would simply add procedural requirements to 10 C.F.R. Part 2 needed to implement the temporary operating licensing authority in section 192 of the Act as provided for in a new § 50.57(d) of 10 C.F.R. Part 50. Unlike the hearing process on the final operating license, the temporary operating licensing process would be subject neither to the hearing requirements of section 189a. of the Act nor to the requirements of subparts A or all the requirements of subpart G of the Rules of Practice in 10 C.F.R. Part 2. However, certain sections of subpart G would be applied to resolve needless controversy about such items as the filing of papers, service on parties, and so on. These are 10 C.F.R. § 2.701, 2.702 and 2.708 - 2.712, relating to service and filing of documents, maintaining a docket, and time computations and extensions; § 2.713, relating to appearance and practice before the Commission; § 2.758, generally prohibiting challenges to the Commission's rules; and § 2.772, generally granting the Commission's Secretary the authority to rule on procedural matters. It should be noted that 10 C.F.R. § 2.719 and 2.780, relating to separation of functions and ex parte communications, would not apply. This would mean that the Commission's staff, applicants and intervenors would be free to contact individual Commissioners as well as the Commission's Office of General Counsel and Office of Policy Evaluation ^{to} argue their respective positions

why say this? ↗

on the temporary operating license.] The Commission is sensitive to the concern that informal contacts should not be extensive and that they should not result in significant data or argument that is both relied on by the Commission in its temporary operating licensing decision and unavailable to the parties for comment before the decision. It will separate ex parte contacts in the area of temporary operating licensing from [those with respect to] operating licensing proceedings and [attempt to] ensure that such contacts do not contaminate operating licensing proceedings. The Commission's decision not to apply separation of functions and ex parte rules to temporary operating licensing is based on the belief that operating licensing and temporary operating licensing proceedings on a given plant are separate proceedings for the purpose of application of the formal hearing requirements of the Administration Procedure Act (APA). The amendment to section 192 of the Atomic Energy Act (Act) states that section 189a. of the Act does not apply to a temporary operating licensing proceeding; thus, if section 189a. does not apply, then the APA's formal hearing requirements do not apply either. Consequently, the Commission's consideration of private communications with the parties in ^{an informal} temporary operating licensing proceeding would not prevent the Commission from eventually considering, as necessary, issues arising from the operating licensing proceeding. In this context, it bears mention that the Conference Committee noted that, under section 192, the Commission cannot issue a temporary operating license before "all significant safety issues specific to the facility in question have been resolved to the Commission's satisfaction." See Conf. Rep. No. 97-884, 97th Cong., 2d Sess. 35 (1982).

Further, section 192 requires that any Commission decision authorizing a temporary operating license or amendment must set forth with specificity the facts and reasons which justify the required findings underlying the decision.

which are in violation of the Act by formal, trial-type proceedings, and

Administrative Procedure Act.

ex parte contacts in formal DL cases

this doesn't follow from preceding two sentences

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Standards for Determining Whether License Amendments
Involve No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations to specify standards for determining whether requested amendments to operating licenses for certain nuclear power reactors and testing facilities involve no significant hazards considerations. These standards will help NRC in its evaluations of these requests. Research reactors are not covered.

EFFECTIVE DATE: _____.* The Commission specifically requests comments on this interim final rule by _____.* Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

*/ 30 days following publication in the FEDERAL REGISTER. This footnote will be deleted after the Commission has acted.

However, the Commission is reviewing the extent to which and the way standards should be applied to research reactors

to involve a significant hazards consideration, accordingly, a new example (viii) has been added to the list of examples in § 50.92(b)(1) to make clear that a reracking of a spent fuel storage pool should be treated in the same way as an example considered likely to involving a significant hazards consideration. Note that, under § 134 of the Nuclear Waste Policy Act of 1982, if a hearing is held in connection with this type of example, it would take the form of a "hybrid" hearing. has been providing, as a matter of public interest, prior notice and an opportunity for a prior hearing on amendment requests involving this issue. As explained in the separate FEDERAL REGISTER notice, it will continue to offer prior notice for public comment of these and other amendment requests. It is not prepared to say, though, that a reracking of a spent fuel storage pool should or should not be treated in the same way as an example considered likely or not likely to involve a significant hazards consideration.

Each such amendment request should be treated with respect to its own intrinsic circumstances, using the standards in § 50.92 of the rule to make a judgment about significant hazards considerations. Consequently, the Commission has decided not to include reracking of a spent fuel storage pool in the list of examples or in the rule. If it does determine that a particular reracking involves significant hazards considerations, it will provide an opportunity for a prior hearing, as explained in the separate FEDERAL REGISTER notice. Additionally, it should be noted that under section 134 of the Nuclear Waste Policy Act of 1982, an interested party may request a "hybrid" hearing rather than a formal adjudicatory hearing in connection with reracking, and may participate in such a hearing, if one is held. The Commission will publish in the near future a FEDERAL