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DEC 24 1980

MEMORANDUM FOR: William J. Dircks  
Executive Director for Operations

FROM: Howard K. Shapar  
Executive Director for Operations

SUBJECT: ATTACHED COMMISSION PAPER "STEVEN SHOLLY, ET AL. V. NRC, ET AL., U.S.C.A., D.C. CIR. NO. 80-1692 - RECOMMENDED FINAL AMENDMENTS TO 10 CFR PART 2, RULES OF PRACTICE, TO IMPLEMENT THE DECISION IN SHOLLY ON HEARING RIGHTS UNDER SECTION 189a. OF THE ATOMIC ENERGY ACT FOR NO SIGNIFICANT HAZARDS CONSIDERATION AMENDMENTS"

The attached Commission paper proposes Commission approval of a Federal Register notice promulgating a final rule implementing the Court's decision in the Sholly case.

In SECY-A-80-183A (see p. 9) the Commission was informed that OELD was reviewing NRC's Rules of Practice to determine whether any changes might be needed to accommodate the Court's interpretation of hearing rights under section 189a. for no significant hazards consideration amendments. Although the Commission has decided to seek judicial review of the Sholly decision, procedures need to be established to enable the Commission to respond promptly to requests for hearing while the issues presented in Sholly are being resolved by the courts. On the basis of the OELD review, now completed, I have concluded that, with some minor modifications, the procedures in 10 CFR Part 2 are adequate to deal with the interpretation of section 189a. in Sholly. Accordingly, the attached Federal Register Notice of Rulemaking (Enclosure A) contains five minor procedural amendments to be effective immediately.

The Chairman of the Atomic Safety and Licensing Appeal Panel, the Chairman of the Atomic Safety and Licensing Board Panel, and the General Counsel have concurred in the recommended final rule. The Director of the Office of Nuclear Reactor Regulation has objected to references in the regulation to "expressions of interest," suggesting, instead, that only "requests for hearing" be mentioned. I believe, however, that the regulation should be promulgated as presently drafted. It simply reflects the Court's language,

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while making it abundantly clear that both "expressions of interest" and "requests for hearing" will have to meet all of the Commission's requirements in Part 2 in order for a hearing to be granted.

Howard K. Shapar  
Executive Legal Director

cc: A. S. Rosenthal, ASLAP  
B. P. Cotter, Jr., ASLBP  
L. Bickwit, Jr., GC  
H. R. Denton, NRR

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