

DEC 24 1980

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: STEVEN SHOLLY, ET AL. V. NRC, ET AL., U.S.C.A., D.C. CIR., NO. 80-1691 - 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.

Purpose: To obtain Commission approval of a Federal Register notice promulgating a final rule.

Discussion: On November 26, 1980, the General Counsel and the Executive Legal Director provided the Commission (SECY-A-80-183A) with the Staff's preliminary views on the impact of the Court's decision in the Sholly case on agency licensing functions and on the TMI-2 cleanup operation. Sholly held, among other things, that even where a license amendment involves no significant hazards consideration, an interested person who requests a hearing is entitled to a hearing by section 189a. of the Atomic Energy Act before the amendment becomes effective. The Sholly decision has no effect upon the Commission's authority to issue immediately effective amendments when the public health, safety, or interest, or the common defense and security so requires. Nor does Sholly alter existing law with regard to the Commission's pleading requirements which enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a. of the Act, that is whether the person has demonstrated "standing," indicated the specific aspect or aspects of the subject matter of the proceeding as to which intervention is sought, and identified one or more issues to be litigated. (See 10 CFR 2.714.)

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 amendments involving no significant hazards consideration. Although the Commission has decided to seek judicial review

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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, the Staff has 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. Although OELD and OGC will examine, once again, whether section 189a. requires an adjudicatory hearing (in the context of an amendment involving no significant hazards consideration), the recommended rule need not be held up pending completion of this review. Accordingly, the Staff is transmitting for Commission review and approval the attached Federal Register Notice of Rulemaking (Enclosure A) containing six minor procedural amendments to §§ 2.700, 2.701(b), 2.704(a), 2.714(a)(1), 2.717(a) and 2.780 in final form. The amendments are presented in comparative text. New material is underlined. No deletions were made in the Commission's existing regulations.

The purpose of the amendments is to provide procedures for expeditious treatment in all phases of the hearing process of written requests for a hearing (including any written expressions of interest which can reasonably be construed to be requests for a hearing) on proposed amendments to reactor construction permits and operating licenses involving no significant hazards consideration. The procedures are not applicable to generalized requests dealing with continued or future construction or operation of a particular facility; requests of this type will be considered under other provisions of the Commission's regulations such as 10 CFR 2.206. In addition, the Director of the Office of Nuclear Reactor Regulation will inform the requester that, upon written request, the requester's name will be placed upon a mailing list to receive automatic notification of requested amendments relating to that facility.

In general, the new procedures are designed to assure that:

- (1) If a request for a hearing or an expression of interest in a pending proposed amendment involving no significant hazards consideration is received, it will be expeditiously processed before action is taken on the proposed amendment. Under the new procedures, except where the public health, safety, or interest or common defense and security requires

an effective amendment to be issued immediately, issuance of the amendment will be stayed until it is determined whether a hearing will be held. If a hearing is to be held, action will not be taken on the proposed amendment until after the conclusion of the hearing process and final disposition of the matter.

(2) An expression of interest which simply seeks information or offers comment on a proposed Commission action is separated from an expression of interest which can reasonably be construed as a request for a hearing.

(3) When a request for a hearing or an expression of interest which constitutes a request for a hearing is received, unless the Commission wishes to preside, an administrative law judge or an atomic safety and licensing board appointed by the Chairman of the Atomic Safety and Licensing Board Panel, as appropriate, will promptly rule on essential preliminary matters such as "standing" and identification of the aspect or aspects of the proposed amendment to be litigated.

(4) If a hearing is to be held an atomic safety and licensing board will preside, unless the Commission directs otherwise.

(5) All aspects of the proceeding will be conducted expeditiously, without infringement of the rights of any party.

Thus, the amendments provide that where there is a request for a hearing or an appropriate expression of interest in the subject matter of a pending proposed license amendment as to which prior notice of hearing or opportunity for hearing has not been published, an adjudicatory hearing will be ordered and the requester admitted as a party if the requester satisfies the Commission's intervention requirements in 10 CFR 2.714.

Recommendation:

That the Commission:

1. Approve publication of the Federal Register notice (Enclosed) promulgating amendments to 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings," in final form.

2. Note that:

- (a) The amendments will be effective immediately upon publication in the Federal Register, although comment will be sought with a view to whether further amendment is appropriate.
- (b) The amendments relate solely to agency procedure and practice and are insignificant from the standpoint of environmental impact. Therefore, pursuant to 10 CFR 51.5(d)(2), an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared.
- (c) The appropriate Congressional Committees will be informed.
- (d) A public announcement, will be, prepared by the Office of Public Affairs and issued when the Federal Register notice is filed with the Office of the Federal Register.

Coordination:

The Chairman of the Atomic Safety and Licensing Appeal Panel, the Chairman of the Atomic Safety and Licensing Board Panel and the General Counsel concur in the issuance of the proposed final amendments.

William J. Dircks
Executive Director for Operations

Enclosures:
Federal Register Notice of
Rulemaking

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Nuclear Regulatory Commission

10 CFR Part 2

Requests for Hearings on Amendments Involving
No Significant Hazards Consideration

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Final Rule.

SUMMARY: In order to implement a recent court ruling, NRC is amending its regulations with respect to participation in proceedings relating to applications for nuclear facility construction permit and operating license amendments involving no significant hazards consideration. The amendments specify procedures that the NRC will use when acting on requests for a hearing on a pending proposed application for amendment, including expressions of interest in the subject matter of the proposed amendment, where the proposed amendment involves no significant hazards consideration and with respect to which there has been no prior publication of notice of intent to issue the amendment. The amendments are immediately effective because they relate to agency practice and procedure. However, public comments are invited on the new regulations, which are subject to modification in response to these comments.

DATE: The amendments are effective [Upon publication in FR]. Comments must be received on or before [30 days after publication in FR].

FOR FURTHER INFORMATION CONTACT: Guy H. Cunningham, III, Esquire, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone (301) 492-7203).

SUPPLEMENTARY INFORMATION:

Background

Section 189a. of the Atomic Energy Act of 1954, as amended (the Act), provides that upon thirty days' notice published in the FEDERAL REGISTER, the Commission may issue an operating license, or an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under section 103 or 104b. of the Act, or a testing facility licensed under section 104c., without a public hearing if no hearing is requested by any interested person. Section 189a. also permits the Commission to dispense with such thirty days' notice and FEDERAL REGISTER publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

Prior to the November 19, 1980, decision of the United States Court of Appeals for the District of Columbia Circuit in Sholly v. NRC (Nos. 80-1691 and 80-1783) (hereinafter Sholly), the Commission's practice with regard to license amendments involving no significant hazards consideration (unless discretionary prior notice was given) was to issue the amendment and then

publish a notice in the FEDERAL REGISTER. In such cases, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for hearing did not, by itself, suspend the effectiveness of the amendment.

The Court of Appeals in Sholly held that, under section 189a. of the Act, even when NRC has made a finding that a proposed amendment to a construction permit or operating license for a utilization or testing facility involves no significant hazards consideration and has determined to dispense with prior publication in the FEDERAL REGISTER, the NRC must nevertheless hold a prior hearing before the amendment can become effective if there has been a request for hearing or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing. See also, Brooks v. AEC, 476 F.2d 924 (D.C. Cir. 1973).

The Commission believes that the Court's decision has no effect upon the Commission's authority to order immediately effective amendments when the public health, safety, or interest, or the common defense and security so requires. See, Administrative Procedure Act, § 9(b), 5 U.S.C. § 558(c), and section 161 of the Atomic Energy Act, as amended, 42 U.S.C. 2201. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements which are designed to enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a.; that is, whether the person has demonstrated standing and identified one or more issues to be litigated. See, BPI v.

Atomic Energy Commission, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not unreasonable for the Commission to require that the prospective intervenor first specify the basis for his request for a hearing."

The amendments to 10 CFR Part 2 and the new procedures

The purpose of these amendments is to implement the Court's decision in the Sholly case, though the Commission has decided to seek judicial review of the decision and the decision has not been finally disposed of by the courts and though the amendments may have to be modified at a later date. The amendments will assure that if, before issuance of a proposed amendment involving no significant hazards consideration, a request for a hearing is received, the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2 provide procedures for expeditious treatment of such a request. In addition, the amendments will assure that an expression of interest in the subject matter of the pending amendment which is reasonably construed as a request for a hearing (hereafter referred to as "an appropriate expression of interest") will be treated in the same way as such a request. The Commission believes that, with some minor modifications, its Rules in Part 2 are adequate to deal with the Court's interpretation of hearing rights under section 189a. for amendments involving no significant hazards consideration. (The Commission recognizes that there may be cases where such requests for hearing or expressions of interest may be received even before a determination has been made as to whether a requested amendment

involves a significant hazards consideration. These amendments apply to such cases, but nothing in these amendments prohibits the presiding officer, either upon his or her own motion or upon motion of a participant, from deferring the decision on a request for hearing until the determination on significant hazards consideration has been made.)

Generally, the objective of the new rule and new procedures is to assure that if a request for a hearing or an expression of interest in a proposed amendment involving no significant hazards consideration is received, it will be expeditiously processed before action is taken on the proposed amendment. The new procedures are designed to assure that an expression of interest which simply seeks information or offers comment on a proposed Commission action will be separated from an appropriate expression of interest; and, where a request for a hearing or an appropriate expression of interest has been received, a presiding officer will promptly rule on essential preliminary matters such as standing and identification of the aspect or aspects of the proposed amendments to be litigated. Finally, it cannot be overemphasized that the Commission expects presiding officers to conduct the proceeding expeditiously, without, of course, infringing on the rights of any party. Thus, the amendments provide that where there is a request for a hearing or an appropriate expression of interest in a pending proposed license amendment as to which prior notice of hearing or opportunity for hearing has not been published, an adjudicatory hearing will be ordered and the requester admitted as a party if the requester satisfies the Commission's intervention requirements in 10 CFR 2.714. It should be noted that only

written requests or expressions of interest will be considered within these new procedures.

Section 189a. of the Act requires the Commission to grant a hearing only upon the request of a person "whose interest may be affected by the proceeding." In many cases, a request for a hearing without accompanying information as to the requester's affected interest(s) may leave the Commission unable to judge whether the request should be granted; similarly, an expression of interest in a Commission action, without more, may leave the Commission unable to decide whether the person is requesting a hearing, wishes to participate in it, and is legally entitled to participate. Accordingly, the Commission believes it necessary that the information called for by the provisions of its intervention rule in 10 CFR 2.714 must be provided before the Commission can formally determine whether or not to grant a hearing. Section 2.714 requires, in essence, that persons requesting a hearing and intervention set forth with particularity their interest in the proceeding, how that interest might be affected by the results of the proceeding, and the specific aspect or aspects of the subject matter of the proceeding as to which they seek intervention. Subsequent identification of specific contentions, and the bases therefor, is also required. Contentions shall be limited to matters within the scope of the amendment under consideration.

Requests for a hearing, including appropriate expressions of interest, must comply with the Commission's "Rules of Practice for Domestic Licensing

Proceedings" in 10 CFR Part 2. Among other things, this means that under 10 CFR 2.701(a), they shall be filed by mail or telegram addressed to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.; and, as prescribed in § 2.701(b), all documents offered for filing must be accompanied by proof of service.

If a request for a hearing or an appropriate expression of interest in a pending proposed amendment (which may involve no significant hazards consideration and as to which notice of proposed action pursuant to 10 CFR 2.105 has not been published) is filed with the Secretary as required by these amendments, and, on its face, appears to meet the requirements of 10 CFR 2.714, normally the Secretary will refer the filing to the Chairman of the Atomic Safety and Licensing Board Panel, who will designate an atomic safety and licensing board to preside. Alternatively, the Commission may refer the request or appropriate expression of interest to an administrative law judge, who will preside. Either the designated atomic safety and licensing board or administrative law judge will expeditiously make the preliminary determination as to whether the intervention requirements of § 2.714(a) have been met and a hearing shall be held. If an atomic safety and licensing board originally presides and determines that a hearing shall be held, it shall continue to preside. However, if an administrative law judge originally presides and determines that a hearing shall be held, the matter may be referred to the Chairman of the Atomic Safety and Licensing Board Panel, who will appoint an atomic safety and licensing board to preside at the hearing.

Proceedings" in 10 CFR Part 2. Among other things, this means that under 10 CFR 2.701(a), they shall be filed by mail or telegram addressed to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.; and, as prescribed in § 2.701(b), all documents offered for filing must be accompanied by proof of service.

If a request for a hearing or an appropriate expression of interest in a pending proposed amendment (which may involve no significant hazards consideration and as to which notice of proposed action pursuant to 10 CFR 2.105 has not been published) is filed with the Secretary as required by these amendments, and, on its face, appears to meet the requirements of 10 CFR 2.714, normally the Secretary will refer the filing to the Chairman of the Atomic Safety and Licensing Board Panel, who will designate an atomic safety and licensing board to preside. Alternatively, the Commission may refer the request or appropriate expression of interest to an administrative law judge, who will preside. Either the designated atomic safety and licensing board or administrative law judge will expeditiously make the preliminary determination as to whether the intervention requirements of § 2.714(a) have been met and a hearing shall be held. If an atomic safety and licensing board originally presides and determines that a hearing shall be held, it shall continue to preside. However, if an administrative law judge originally presides and determines that a hearing shall be held, the matter may be referred to the Chairman of the Atomic Safety and Licensing Board Panel, who will appoint an atomic safety and licensing board to preside at the hearing.

If a hearing is granted, the requester shall be a party to the proceeding, subject to any limitations in the order granting the hearing, and shall have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

The Commission notes that, independently of whether a request for a hearing or an appropriate expression of interest in a proposed amendment involving no significant hazards consideration is received, it may publish in the FEDERAL REGISTER, in accordance with 10 CFR 2.105(a)(4), a notice of proposed action on the amendment, if it determines that general notice of an opportunity for a public hearing is warranted.

If the request for a hearing or expression of interest in the subject matter of a proposed amendment involving no significant hazards consideration is filed with the Secretary, and it does not meet the requirements in 10 CFR 2.714, or, if the request or expression of interest is not filed with the Secretary, but, rather, sent to a Commissioner or a Commission staff member, the recipient of the request or expression of interest will send it immediately to the Director, Office of Nuclear Reactor Regulation (NRR). Upon receipt of such a request or expression of interest, the Director of NRR will send the originator a letter (1) enclosing a copy of the Commission's procedural rules in 10 CFR Part 2; (2) pointing out the requirements in 10 CFR 2.714; and (3) informing the author that, unless a request for hearing meeting the procedural requirements of 10 CFR 2.714 is filed with the Secretary within 15 days from the date of the letter, it will be assumed that the

requester has determined not to formally seek an adjudicatory hearing and party status in that hearing and that the proposed amendment may be granted without further notice.

The procedures described in this notice and required by the accompanying amendments will be applied only in cases where the person submitting a request for a hearing or an appropriate expression of interest has identified a particular pending proposed amendment action or a subject matter encompassed within such a proposed amendment action. They will not be applied to generalized requests dealing with continued or future construction or operation of a particular facility (although such generalized requests may require consideration under other provisions of the Commission's regulations such as 10 CFR 2.206). However, where a request or an expression of interest relates generally to actions affecting a particular facility, rather than to a specific proposed amendment, the Director of NRR will inform the author that, upon request, he or she will be placed upon a mailing list to receive automatic notification of amendments requested by the facility licensee.

As previously noted, the Court's decision in Sholly has no effect upon the Commission's authority to issue immediately effective amendments when the public health, safety, or interest, or the common defense and security so requires. Except in those circumstances, however, receipt of a request for a hearing or an appropriate expression of interest in an application for an amendment as to which prior notice of hearing or opportunity for hearing has

not been published shall serve to stay issuance of the amendment until it is determined, in accordance with the procedures specified in these amendments, whether a hearing shall be held. If a hearing is to be held, action shall not be taken on the proposed amendment until the matters raised in the request have been determined.

Finally, although the Commission is not amending 10 CFR 2.718, "Power of presiding officer," it emphasizes that presiding officers are to take expeditiously all appropriate actions within the terms of 10 CFR Part 2 to determine whether a hearing is required with respect to any proposed amendment involving no significant hazards consideration. In addition, the Commission expects presiding officers to deal expeditiously with all aspects of the hearing process using all available appropriate techniques in Part 2, such as, among others, the use of summary disposition, expedited schedules for completion of various hearing phases, appropriate prehearing conferences, expedited discovery, expedited schedules for submission of testimony as well as special care to avoid duplicative testimony, and strict schedules for the submission of findings of fact and conclusions of law.

Because these amendments relate solely to agency procedure and practice, the Commission has found that good cause exists for omitting notice of proposed rulemaking and public procedure thereon, as unnecessary, and for making the amendments effective upon publication in the FEDERAL REGISTER without the customary 30-day notice. However, public comments are invited on the new regulations, which are subject to modification in response to these comments.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 2, are published as a document subject to codification.

PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. Section 2.700 is revised to read as follows:

§ 2.700 Scope of subpart.

The general rules in this subpart govern procedure in all adjudications initiated by the issuance of an order to show cause, an order pursuant to § 2.205(e), a notice of hearing, a notice of proposed action issued pursuant to § 2.105, a notice issued pursuant to § 2.102(d)(3), or a request for a hearing or an expression of interest in a pending proposed amendment to a construction permit or operating license for a utilization or testing facility as to which prior notice of hearing or opportunity for hearing has not been published.

2. Section 2.701(b) is revised to read as follows:

§ 2.701 Filing of documents.

* * * * *

- (b) All documents offered for filing shall be accompanied by proof of service upon all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission. The staff of the Commission shall be deemed to be a party. Where the document to be filed is a request for a hearing or an expression of interest in the subject matter of a pending proposed amendment as to which prior notice of hearing or opportunity for hearing has not been published, the applicant for the amendment shall also be served.

3. Section 2.704(a) is revised to read as follows:

§ 2.704 Designation of presiding officer, disqualification, unavailability.

- (a) The Commission may provide in the notice of hearing that one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the matter, shall preside.

If the Commission does not so provide, the Chairman of the Atomic Safety and Licensing Board Panel will issue an order designating an atomic safety and licensing board appointed pursuant to section 191 of the Atomic Energy Act of 1954, as amended, or, if the Commission has not provided for the hearing to be conducted by an atomic safety and licensing board, the Chief Administrative Law Judge will issue an order

designating an administrative law judge appointed pursuant to section 3105 of title 5 of the United States Code.

Upon receipt by the Secretary of a request for a hearing on a pending proposed amendment to a reactor construction permit or operating license (including an expression of interest in the subject matter of the pending amendment which is reasonably construed as a request for a hearing) as to which prior notice of hearing or opportunity for hearing has not been published, filed in accordance with the requirements of § 2.714, the Commission will normally direct that the filing be referred to an administrative law judge or to the Chairman of the Atomic Safety and Licensing Board Panel for designation of an atomic safety and licensing board to determine expeditiously whether a hearing shall be granted. If an administrative law judge determines that a hearing shall be granted, normally he or she shall refer the matter to the Chairman of an atomic safety and licensing board designated by the Chairman of the Atomic Safety and Licensing Board Panel to preside at the hearing.

4. Section 2.714(a)(1) is revised to read as follows:

§ 2.714 Intervention.

(a)(1) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition

for leave to intervene. In a proceeding noticed pursuant to § 2.105, any person whose interest may be affected may also request a hearing. (The criteria of this section for the granting of a hearing and the admission of a party to that hearing also apply to requests for a hearing, or expressions of interest reasonably construed as requests for a hearing, concerning a proposed reactor construction permit or operating license amendment as to which prior notice of hearing or opportunity for hearing has not been published.) The petition and/or request shall be filed not later than the time specified in the notice of hearing, or as provided by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, or as provided in § 2.102(d)(3) or within 15 days of the date of any letter, describing the requirements in this section, sent to the petitioner/requester by the Director of the Office of Nuclear Reactor Regulation. Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d) of this section:

* * * * *

5. Section 2.717(a) is revised to read as follows:

§ 2.717 Commencement and termination of jurisdiction of presiding officer.

(a) Unless otherwise ordered by the Commission, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. If no presiding officer has been designated, the Chief Administrative Law Judge has such jurisdiction or, if he or she is unavailable, another administrative law judge has such jurisdiction. A proceeding is deemed to commence when a notice of hearing or a notice of proposed action pursuant to § 2.105 is issued, or upon referral to a presiding officer, pursuant to § 2.704(a), of a request for a hearing on a pending proposed amendment to a reactor construction permit or operating license (including an expression of interest in the subject matter of the pending amendment which is reasonably construed as a request for a hearing) as to which prior notice of a hearing or opportunity for a hearing has not been published. When a notice of hearing provides that the presiding officer is to be an administrative law judge, the Chief Administrative Law Judge will designate by order the administrative law judge who is to preside. The presiding officer's jurisdiction in each proceeding will terminate upon the expiration of the period within which the Commission may direct that the record be certified to it for final decision, or when the Commission renders a final decision, or when the presiding officer shall have withdrawn

himself from the case upon considering himself disqualified, whichever is earliest.

* * * * *

6. Section 2.780(a) is revised to read as follows:

§2.780 Ex parte communications.

(a) Except as provided in paragraph (c) of this section, neither (1) Commissioners, members of their immediate staffs, or other NRC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions will request or entertain off the record except from each other, nor (2) any party to a proceeding for the issuance, denial, amendment, transfer, renewal, modification, suspension, or revocation of a license or permit, or any officer employee, representative, or any other person directly or indirectly acting in behalf thereof, shall submit off the record to Commissioners or such staff members, officials, and employees, any evidence, explanation, analysis, or advice, whether written or oral, regarding any substantive matter at issue in a proceeding on the record then pending before the NRC for the issuance, denial, amendment, transfer, renewal, modification, suspension, or revocation of a license or permit. For the purposes of this section, the term "proceeding on the record then pending before the NRC" shall include any application or matter which has been noticed

for hearing or concerning which a hearing has been requested pursuant to this part, except that, where a request for a hearing on a pending proposed amendment to a reactor construction permit or operating license (including an expression of interest treated as a request for hearing) has been received, the proceeding on the record shall be deemed to commence with referral of the request or expression of interest to an administrative law judge or atomic safety and licensing board.

(Secs. 161, 189, Pub. L. 83-703, as amended, 68 Stat. 948, 955, (42 U.S.C. 2201, 2239); Pub. L. 90-23, 81 Stat. 54 (5 U.S.C. 558(c)); sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841)).

Dated at Washington, D.C., this day of , 198 .

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Chilk
Secretary of the Commission