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TITLE: PR-002,050,055,115 - 31FR00832 - STATEMENT OF
GENERAL POLICY. MISCELLANEOUS AMENDMENTS.
(GUIDANCE FOR AS&L BOARDS)

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(31FR00832)

In the Matter of

STATEMENT OF GENERAL POLICY. MISCELLANEOUS AMENDME
NTS. (GUIDANCE FOR AS&L BOARDS)

	DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
1	01/17/66	01/17/66	FEDERAL REGISTER NOTICE - PROPOSED RULE
2	03/15/66	03/14/66	LETTER TO SECRETARY FROM BRICE O'BRIEN, NATIONAL COAL ASSOCIATION - COMMENT
3	03/28/66	03/25/66	LETTER TO SECRETARY FROM DONALD R. CHADIWCK, M.D., DEPARTMENT OF HEW PUBLIC HEALTH SERVICE - COMMENT
4	03/31/66	03/29/66	LETTER TO SECRETARY FROM RICHARD D. KAHN, ESQ., ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK - COMMENT
5	04/18/66	04/13/66	LETTER TO SECRETARY FROM JAMES H. CAMPBELL, ATOMIC INDUSTRIAL FORUM, INC. - COMMENT
6	05/27/66	01/26/66	MEMO TO HAROLD L. PRICE FROM SAMUAL W. JENSCH - COMMENT
7	05/27/66	02/02/66	LETTER TO HAROLD L. PRICE FROM EMERSON JONES - COMMENT
8	05/27/66	02/03/66	LETTER TO HAROLD L. PRICE FROM ABEL WOLMAN - COMMENT
9	09/23/66	09/23/66	FEDERAL REGISTER NOTICE - FINAL RULE

STATUS OF RULEMAKING

PROPOSED RULE: PR-002,050,055,115 OPEN ITEM (Y/N) N

RULE NAME: STATEMENT OF GENERAL POLICY. MISCELLANEOUS
AMENDMENTS. (GUIDANCE FOR AS&L BOARDS)

PROPOSED RULE FED REG CITE: 31FR00832

PROPOSED RULE PUBLICATION DATE: 01/21/66 NUMBER OF COMMENTS: 7

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HISTORY OF THE RULE

PART AFFECTED: PR-002,050,055,115

RULE TITLE: STATEMENT OF GENERAL POLICY. MISCELLANEOUS
AMENDMENTS. (GUIDANCE FOR AS&L BOARDS)

PROPOSED RULE	PROPOSED RULE	DATE PROPOSED RULE
SECY PAPER:	SRM DATE: / /	SIGNED BY SECRETARY: 01/17/66
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STAFF CONTACTS ON THE RULE

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ATOMIC ENERGY COMMISSION

/10 CFR Parts 2, 50, 55, and 115/

RULES OF PRACTICE
LICENSING OF PRODUCTION AND UTILIZATION FACILITIES
OPERATORS' LICENSES
PROCEDURES FOR REVIEW OF CERTAIN NUCLEAR REACTORS
EXEMPTED FROM LICENSING REQUIREMENTS

Amendments to Rules of Practice;
Statement of General Policy; Miscellaneous Amendments

The Commission has under consideration several amendments of its Rules of Practice, 10 CFR Part 2, the adoption of a statement of general policy to be appended to that part and miscellaneous amendments of Parts 2, 50, 55, and 115. It is expected that the amendments will expedite the Commission's facility licensing procedure and clarify certain provisions in existing regulations.

Licensing hearings involving the construction and operation of nuclear reactors and other production and utilization facilities are ordinarily conducted by atomic safety and licensing boards whose establishment by the Commission was authorized by section 191 of the Atomic Energy Act of 1954, as amended (the Act). The Commission has authorized such boards to conduct public hearings and make initial decisions in proceedings relating to the granting, suspending, revoking, or amending of licenses or authorizations issued by the Commission. Rules applicable to licensing proceedings conducted by boards (and by hearing examiners) are set forth in 10 CFR Part 2.

The amendments to Part 2 and policy statement under consideration reflect several of the recommendations made by a seven-member Regulatory Review Panel, appointed by the Commission to study (1) the programs and procedures for licensing and regulation of reactors and (2) the decision-making process in the Commission's regulatory program. The Panel's report included a number of recommendations in both

areas, particularly in respect to the conduct of "uncontested" licensing proceedings at the construction permit stage.

Proposed Amendments to Part 2

The proposed amendment of § 2.104 which follows would add a new paragraph (b) to set out the issues which will be specified in the notice of hearing on applications for a construction permit for a facility under section 103 or section 104 b. of the Act or for a testing facility under section 104 c. of the Act. If such a proceeding is not contested, a de novo review of the application would not be conducted, and the board would determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, both to support the findings proposed to be made by the Director of Regulation, which are necessary under the Act and the Commission's regulations for the issuance of a provisional construction permit, and the issuance of the provisional construction permit as proposed by the Director of Regulation. If such a proceeding is "contested,"* the board will decide all matters in controversy, and make the findings on the issues specified in the notice of hearing for a contested proceeding,

The proposed amendment of § 2.721 would set out the procedure followed by the Commission in designating a technically qualified alternate for an atomic safety and licensing board and the effect of such designation. The amendment would specify that if a technically qualified

*A "contested proceeding" would be defined in the Commission's "Rules of Practice" by a proposed amendment to § 2.4 of 10 CFR Part 2, issued simultaneously herewith.

member of a board becomes unavailable before the hearing commences, the board may constitute the alternate as a member of the board by notifying the Commission and the alternate.

Amendment of § 2.764, Expedited effectiveness of initial decision directing issuance or amendment of construction permit, is also proposed. The present rule provides that initial decisions directing the issuance or amendment of construction permits and authorizations may, upon written motion and after specified findings are made by the presiding officer, be made effective ten days after the date of issuance; the rule also provides that effectiveness may be stayed pending filing of a petition for review of the provision for expedited effectiveness. The Commission has concluded, however, that, except where good cause has been shown by a party why the initial decision should not become immediately effective, its licensing procedures can be expedited by providing for an initial decision which directs the issuance or amendment of a construction permit or authorization to become effective immediately without the necessity of filing a motion, subject, of course, to Commission review. The proposed amendment which follows would implement that conclusion and would also provide that the Director of Regulation must issue the permit authorized within ten days from the effective date of the initial decision.

Proposed Statement of General Policy -
Appendix A to Part 2

Certain recommendations of the Regulatory Review Panel do not require or lend themselves, to inclusion as formal rules in the Commission's Rules of Practice. They have, however, been incorporated in a proposed statement of general policy (Appendix A to Part 2), which would explain the procedures to be followed in the conduct by atomic safety and licensing boards of proceedings involving applications for construction permits on which the Act requires a hearing. The Commission expects that the provisions of the proposed Statement of General Policy, to the extent that they are not inconsistent with the Commission's rules and regulations, will be useful as interim guidance until such time as the Commission takes further action on them.

Proposed Amendments to Parts 50, 55 and 115

The Commission is proposing minor or clarifying amendments of 10 CFR Parts 50 and 115 with respect to (1) the findings necessary to support the issuance of a provisional construction permit or authorization and (2) the terms used to designate the documents which are now termed (a) the "hazards report" submitted by applicants for permits or licenses under Part 50 or authorizations under Part 115 and (b) the "hazards analysis" prepared by the Commission's regulatory staff.

At present, § 50.35(a) of Part 50 and § 115.24(a) of Part 115 authorize issuance of a provisional construction permit or authorization if, among other things, the Commission finds that "the applicant *** has identified the major features or components on which technical information is required" (subparagraph (1)), that "the omitted technical information will be supplied" (subparagraph (2)), and that "the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve the safety questions, if any, with respect to those features or components which require research and development" (subparagraph (3)). It is proposed that § 50.35(a) (1), (2) and (3) and § 115.24(a) (1), (2) and (3) be amended to clarify the point that certain design and technical information need not be submitted until the operating license stage.

In addition, the Commission proposes to amend Parts 50 and 115 (and Parts 2 and 55) to substitute the term "safety analysis report" for "hazards summary report" and "safety analysis" for "hazards analysis" (or the equivalent) where they appear. It is believed that the terms "safety analysis report" and "safety analysis" are more accurate descriptions of those documents. All of these proposed amendments are clarifying in nature and have no substantive effect on existing construction permittees under Part 50 or holders of authorizations under Part 115.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act of 1946, notice is hereby given that adoption of the following amendments of 10 CFR Parts 2, 50, 55, and 115 and of the proposed statement of general policy is contemplated. All

interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments and statement of general policy should send them to the Secretary, United States Atomic Energy Commission, Washington, D. C. 20545, within sixty days from publication of this notice in the FEDERAL REGISTER. Comments received after that time will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments filed within the period specified.

1. Paragraph (b) of § 2.104 of 10 CFR Part 2 is redesignated paragraph (c) and a new paragraph (b) is added to § 2.104 to read as follows:

§ 2.104 Notice of hearing.

* * * * *

- (b) In the case of an application for a construction permit for a facility on which the Act requires a hearing, the notice of hearing will, unless the Commission determines otherwise, state, in implementation of subparagraph (a)(3) of this section:

- (1) That, if the proceeding is a contested proceeding, the presiding officer will consider the following issues:

- (i) Whether in accordance with the provisions of § 50.35(a) of this chapter

- (a) The applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;*

*The Commission has issued for interim guidance "General Design Criteria for Nuclear Power Plant Construction Permits." See press release No. H-252, dated November 22, 1965.

- (b) Such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration will be supplied in the final safety analysis report;
- (c) Safety features or components, if any, which require research and development, have been described by the applicant and the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components;
- (d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;
- (ii) Whether the applicant is technically qualified to design and construct the proposed facility;
- (iii) Whether the applicant is financially qualified to design and construct the proposed facility;
- (iv) Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

(2) That, if the proceeding is not a contested proceeding, the presiding officer will, without conducting a de novo review of the application, determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support affirmative findings on Issues (i) - (iii) specified in subparagraph (1) of this paragraph (b) and a negative finding on Issue (iv) specified in subparagraph (1) of this paragraph (b) proposed to be made and the issuance of the provisional construction permit proposed by the Director of Regulation.

2. Subparagraphs 2.105(b)(2) and 2.106(b)(2) of 10 CFR Part 2 are amended by substituting the words "safety analysis" for "safeguards analysis" where they appear.

3. Section 2.721 of 10 CFR Part 2 is revised to read as follows:

§ 2.721 Atomic safety and licensing boards.

(a) The Commission may from time to time establish one or more atomic safety and licensing boards, each composed of three members, two of whom will be technically qualified and one of whom will be qualified in the conduct of administrative proceedings, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate.

(b) The Commission may designate a technically qualified alternate for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a technically qualified member of a board becomes unavailable before the hearing commences, the board may constitute the alternate as a member of the

board by notifying the Commission and the alternate who will, as of the date of such notification, serve as a member of the board.

- (c) An atomic safety and licensing board shall have the duties and may exercise the powers of a presiding officer as granted by § 2.718 and otherwise in this part. At any time when such a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the chief hearing examiner may be exercised with respect to such a proceeding by the chairman of the board having jurisdiction over it.

4. Section 2.764 of 10 CFR Part 2 is revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit.

- (a) An initial decision directing the issuance or amendment of a construction permit or construction authorization shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to the review thereof and further decision by the Commission upon exceptions* filed by any party pursuant to § 2.762 of this part or upon its own motion.
- (b) The Director of Regulation, notwithstanding the filing of exceptions, shall issue a construction permit or authorization, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

5. A statement of general policy is appended to 10 CFR Part 2 to read as follows:

*While Part 2 now provides for review by petition which the Commission in its discretion may or may not grant (§ 2.762), the Commission has published for public comment proposed amendments to Part 2 which would provide for appeals from initial decisions as of right upon filing of exceptions.

APPENDIX A. STATEMENT OF GENERAL POLICY: CONDUCT OF PROCEEDINGS FOR THE ISSUANCE OF CONSTRUCTION PERMITS FOR PRODUCTION AND UTILIZATION FACILITIES FOR WHICH A HEARING IS REQUIRED UNDER SECTION 189 a. OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED.

On December 8, 1962, the Atomic Energy Commission published amendments of its Rules of Practice (10 CFR Part 2) to describe the functions and procedures of its atomic safety and licensing boards (27 F.R. 12184). Those amendments implemented Public Law 87-615 of the 87th Congress, effective August 29, 1962, which was designed to permit greater flexibility and to encourage informality in the conduct of AEC licensing proceedings. The statement of considerations which was published with the amendments to Part 2 included recommendations for the conduct of proceedings by atomic safety and licensing boards, in order to carry out the purpose that hearings in which there are no substantial contested issues among the parties should be conducted more informally than had theretofore been the practice. On November 25, 1963, the Commission issued Press Release F-240 which covered in greater detail the same general subject matter as the statement of considerations and also emphasized the importance which the Commission attached to implementing the informal procedures to the fullest extent practicable in uncontested cases. In the statement of considerations the Commission, recognizing the need for continuing review of its procedures, specifically pointed out that it intended to adopt from time to time any further amendments of its regulations which experience in the operation of atomic safety and licensing boards might indicate as being necessary or desirable.

As a part of that continuing review the Commission announced the appointment of a seven-member Regulatory Review Panel on January 25, 1965 to study (1) the programs and procedures for the licensing and regulation of reactors and (2) the decision-making process in the Commission's regulatory program.

Several of the Panel's recommendations, which were submitted on July 14, 1965, are implemented in the amendments to Part 2 which have been issued simultaneously herewith. As a result of those amendments, the statement of considerations and press release referred to above no longer accurately reflect in detail current Commission rules and policy.

The following Statement of General Policy explains in detail the procedures which the Atomic Energy Commission expects to be followed by atomic safety and licensing boards in the conduct of proceedings relating to the issuance of construction permits for nuclear power and test reactors and other production or utilization facilities for which a hearing is mandatory under section 189 a. of the Atomic Energy Act of 1954, as amended (the Act).*

The Statement reflects the Commission's intent that such proceedings be conducted informally and expeditiously and its concern that its procedures maintain sufficient flexibility to accommodate that objective.

Such proceedings are frequently uncontested in that the application for a construction permit is not opposed by an intervenor nor are there any controversies between the Commission's regulatory staff and the applicant concerning the issuance of the permit or the terms and conditions thereof. The provisions of Section I through V of the following Statement are, for the sake of convenience, set out in the framework of the uncontested proceeding. They are applicable also, however, to the contested proceeding except as the context would otherwise indicate, or except as indicated in Section VI. Section VI sets out the procedures specifically applicable to the contested proceeding.

Atomic safety and licensing boards are appointed from time to time by the Atomic Energy Commission to conduct hearings in licensing cases under the authority of section 191.

*Except as the context may otherwise indicate, this Statement is also generally applicable to the conduct of proceedings for the issuance of operating licenses for such facilities, as well as to authorization proceedings conducted under Part 115, Procedures for Review of Certain Nuclear Reactors Exempted from Licensing Requirements, and to licensing proceedings of the type described in the Statement which may be conducted by a hearing examiner as the presiding officer.

of the Act. Section 191. authorizes the Commission to establish one or more atomic safety and licensing boards to conduct public hearings and to make intermediate or final decisions in administrative proceedings relating to granting, suspending, revoking or amending licenses or authorizations issued by the Commission. It requires that each board consist of two members who are technically qualified and one member who is qualified in the conduct of administrative proceedings. Members for each board may be appointed by the Commission from a panel selected from private life, the staff of the Commission or other Federal agencies.

This statement is intended as a guide to the conduct of public hearings under the mandatory hearing requirements of the Act for the information of the public and assistance of members of boards and parties to licensing proceedings. It is not all inclusive. It is intended to explain and summarize certain requirements of governing statutes, the Commission's Rules of Practice, 10 CFR Part 2, and some applicable principles of law and good practice.

I. Preliminary Matters

- (a) A public hearing is announced by the issuance of a notice of hearing signed by the Commission's Secretary, stating the nature of the hearing, its time and place and the issues to be considered. When a hearing is to be held before a board, the notice of hearing will ordinarily designate the chairman and the other members. The notice of hearing is published in the FEDERAL REGISTER at least 30 days prior to the date of hearing. In addition, a public announcement is issued by the Commission regarding the date and place of the hearing.

- (b) In fixing the time and place of any postponed hearing or of the prehearing conference the boards will take into consideration the convenience of board members, the AEC staff and other parties to the extent practicable.
- (c) The notice of hearing will, unless the staff opposes the application, include the findings which the Director of Regulation proposes to make, that is, the findings which are necessary under the Act and the Commission's regulations to support the granting of an application, and the form of provisional construction permit which he proposes to issue. The Director of Regulation will, of course, be free to propose different findings on the basis of new information brought out at the hearing.
- (d) The notice of hearing will state that the board will determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the proposed provisional construction permit. The notice of hearing will also state that the board will not conduct a de novo review of the application.
- (e) Prior to a hearing, board members should review and become familiar with:

The record of any relevant prior proceedings in the case, including initial decisions and Commission orders.

The Advisory Committee on Reactor Safeguards (ACRS) report, the staff safety analysis, the application and all other papers filed in the proceeding.

The Commission's Rules of Practice, 10 CFR Part 2, and such other regulations or published statements of policy of the Commission as may be pertinent to the proceedings.

- (f) At any time when a board is in existence but is not actually in session, the chairman has all the powers of the board to take action on procedural matters. The chairman may have occasion, when the board is not in session, to dispose of preliminary procedural requests including, among other things, motions by parties relating to the conduct of the hearing. He may wish to discuss such requests with the other members of the board before ruling on them. No interlocutory appeal* may be taken by a party as a matter of right from a ruling of the chairman or the board. The board should refer the challenged ruling to the Commission for a final decision if, in its judgment, a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense. This authority should be exercised sparingly, and only when deemed essential in fairness to the parties or the public.

* An interlocutory appeal means an appeal to the Commission from a ruling made by the board during the time between the issuance of a notice of hearing and the issuance of the initial decision.

II. Prehearing Conference

- (a) A prehearing conference, which is authorized in § 2.752 of 10 CFR Part 2, serves a vital function in defining substantive issues and in settling matters of procedure before the start of the hearing. A prehearing conference should be regarded as an informal meeting of the board with the parties to facilitate and expedite the conduct of the hearing where (a) the significant safety questions can be identified and discussed, (b) any matters in controversy between the parties can be clearly identified, and (c) any preliminary matters, such as identifying the witnesses to be presented by the parties or requested by the board; specifying the order and method of presentation of their testimony; scheduling the exchange of prepared testimony and documentary evidence; determining the contents of the decisional record and the method of designating exhibits; discussing procedures to be followed at the hearing; and arriving at such agreements as will aid in the conduct and expeditious disposition of the proceeding, can be disposed of. The Commission strongly encourages their use and expects that a prehearing conference will ordinarily be held in each licensing proceeding before an atomic safety and licensing board.
- (b) The timing of the prehearing conference will depend on the nature of the case, and should be decided after preliminary study of the case. When feasible, it will assist preparation for the hearing if the prehearing conference is held well in advance of the hearing. The prehearing conference will

usually be held without prior public notice, but the board may issue a notice informing the public of the time and place. Prehearing conferences are open to the public except under exceptional circumstances involving matters such as those referred to in 10 CFR §§ 2.810 (a) and (b) ("company confidential" information; classified information; and certain privileged information not normally a part of the hearing record.)

(c) It is expected that a transcript of each prehearing conference will be prepared.

(d) Any agreements reached or decisions made at the conference will be incorporated promptly in the formal record of the hearing without prejudice to the rights of any subsequent intervenor.

The board will be expected at the opening of the hearing to state on the record that such a conference has been held and the time and place of the meeting and the persons who attended.

(e) The applicant, the regulatory staff and other parties will ordinarily provide each other and the board with copies of prepared testimony in advance of the hearing. A schedule may be established at the prehearing conference for exchange of prepared testimony. The applicant ordinarily files a summary of his application, including a summary description of the reactor and his evaluation of the considerations important to safety, and the staff files a safety analysis prior to the hearing. These are adopted by the testimony of witnesses sworn at the hearing. All of these documents and prepared testimony are filed in the Commission's Public Document Room and are available for public inspection.

III. The Hearing

The following procedures should be observed in the conduct of public hearings:

(a) Preliminary

- (1) A verbatim transcript will be made of the hearing.
- (2) The chairman should convene the hearing by stating the title of the proceeding and describing its nature.
- (3) He should state the date, time and place at which the prehearing conference was held, and identify the persons participating in it. He should summarize the prehearing order, or, if there is no written prehearing order, the results of the prehearing conference.
- (4) He should explain the procedures for the conduct of the hearing. He should request that counsel for the parties identify themselves on the record, and provide them with the opportunity to make opening statements of their respective positions.
- (5) He should describe, for the benefit of members of the public who may be present, the respective roles of the board, the ACRS and the staff, and the Commission procedures for review of the decision. He should also describe the continuing review and inspection surveillance conducted by the Commission after a construction permit or an operating license has been issued.

(b) Intervention and Limited Appearances

- (1) The chairman should call attention to the provisions of 10 CFR §§ 2.714 Intervention and 2.715 Participation by a person not a party (limited appearance). He should briefly explain these provisions and the rights of persons who may qualify as intervenors or as persons to be permitted to make limited appearances. He should call attention to the provision of 10 CFR § 2.714(d) that the granting of a petition to intervene does not change or enlarge the issues specified in the notice of hearing unless expressly provided in the order allowing intervention.

- (2) The chairman should inquire of those in attendance whether there are any who wish to participate in the hearing by intervention or by limited appearance.
- (3) The board should rule on each request to participate in the hearing on either basis. The Commission's rules require that a petition for intervention be filed at least seven days prior to the start of the hearing. A board has general authority to extend the time for good cause with respect to allowing intervention.
- (4) As required by § 2.714 of 10 CFR Part 2, a person who wishes to intervene must set forth, in a petition for leave to intervene, his interest in the proceeding, how the interest may be affected by Commission action, and his contentions. After consideration of any answers, the board will rule on the petition. In any event, the board should not permit enlarging of the issues, or receive evidence from an intervenor, with respect to matters beyond the jurisdiction of the Commission.
- (5) Those permitted to intervene become parties to the proceeding. Persons permitted to make limited appearances do not become parties, but should be permitted to make statements at such stage of the proceeding as the board may consider appropriate. A person making a limited appearance may only make an oral or written statement on the

record, and may not participate in the proceeding in any other way. The board may wish to limit the length of oral statements. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance for the purpose of making a statement.

- (6) It is important that the board make clear to the members of the public seeking to participate the difference between intervention and limited appearance. An intervenor, unlike a person making a limited appearance, has all the rights of the applicant and the staff to participate fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. A person making a limited appearance may want not only to state his position, but to raise questions which he would like to have answered. This should be permitted to the extent the questions are within the scope of the proceeding as defined by the issues set out in the notice of hearing, the prehearing conference report, and any later orders. Usually such persons should be asked to make their statements or raise their questions early in the proceeding so that the board will have an opportunity to be sure that relevant and meritorious questions are properly dealt with during the course of the hearing.

- (7) It is the Commission's view that the rules governing intervention and limited appearances are necessary in the interest of orderly proceedings. The Commission also believes that through these two methods of public participation all members of the public are assured of the right to participate by a method appropriate to their interest in the matter. This should be fully explained at the beginning of the hearing. In some cases the board may feel that it must deny an application to intervene but that it can still accommodate the desire of the person involved by allowing him to make a statement and raise questions under the limited appearance rule.
- (8) Boards have considerable discretion as to the manner in which they accommodate their conduct of the hearing to local public interest and the desires of local citizens to be heard. Particularly in cases where it is evident that there is local concern as to the safety of the proposed plant, boards should so conduct the hearing as to give appropriate opportunity for local citizens to express their views, while at the same time protecting the legal interest of all parties and the public interest in an orderly and efficient licensing process. Boards should give full public recognition to the fact that utilization of such opportunity is one of the important reasons why public hearings are held by the Commission and are held in the locality of interest.

(c) Opening Statements and Testimony

- (1) In order to facilitate public understanding of the proceeding it is anticipated that the applicant (who has the burden of proof in licensing proceedings), will, at an appropriate time early in the proceeding, make an oral statement describing in terms that will be readily understood by the public, the manner in which the safety of the public will be assured, by such provisions as siting, safety features of the reactor, including engineered safeguards, etc. It may be that the "summary description" of the reactor and * * * evaluation of the considerations important to safety" referred to at paragraph (a) of Section II above, will satisfactorily serve as the basis for such oral statement.
- (2) The staff will also, early in the proceeding but after the applicant has made the oral statement referred to in the preceding paragraph, make an oral statement describing the staff's evaluation of the application and the reasons for the conclusions reached by the staff, and summarizing the various steps taken by the staff and the ACRS in their review of the application.
- (3) The testimony of all witnesses will be given under oath. These witnesses may be collectively sworn at the opening of the hearing or if additional witnesses are called upon to testify at a subsequent stage they may be sworn at the time of their appearance.
- (4) There is ordinarily no need for oral recital of prepared testimony unless the board considers that some useful purpose will be served. Each witness presented by a party may be questioned by other parties and by the board. Unless

testimony is being taken on a roundtable basis or there is some occasion for clarification of testimony as rendered, the board may wish to reserve its questions until the parties have completed questioning of the witnesses, since counsel for the respective parties will generally be prepared to develop the various lines of pertinent questions.

- (5) Opportunity should be assured, on an orderly basis, for each party to comment on statements made by other parties.
- (6) The proceedings should be conducted as expeditiously and informally as practicable, without impairing the development of a clear and adequate record. The order of presenting testimony may be freely varied in the conduct of the hearing. The board may find it helpful to take expert testimony from witnesses on a roundtable basis after the receipt in evidence of prepared written testimony.
- (7) Objections may be made by counsel to any questions or any line of questioning, and should be ruled upon by the board. The board may admit the testimony, may sustain the objection, or may receive the testimony, reserving for later determination the question of admissibility. In passing on objections, the board, while not bound to view proffered testimony according to its admissibility under strict application of the rules of evidence in judicial proceedings, should exclude testimony that is clearly irrelevant

to issues in the case, or that pertains to matters outside the jurisdiction of the board or the Atomic Energy Commission. Examples of matters which are considered irrelevant to the issues in the case or outside the jurisdiction of the board or the Atomic Energy Commission include the thermal effects (as opposed to the radiological effects) of the facility operation on the environment; the effect of the construction of the facility on the recreational, economic or political activities of the area near the site; and matters of aesthetics with respect to the proposed construction.

(d) Documentary Evidence

- (1) Documentary evidence may be offered in evidence as provided in 10 CFR § 2.743.
- (2) Such evidence offered during the course of the hearing should be described by counsel, and furnished to the reporter for marking. Documents offered for marking should be numbered in order of receipt. On identification of a document, it may be offered in evidence.

(e) Record

- (1) The transcript of testimony and the exhibits, together with all of the papers and requests filed in a proceeding, constitute the record for decision, except to the extent that official notice is taken pursuant to the following paragraph.

(f) Official Notice

- (1) "Official notice" is a legal term of art.

Generally speaking, a decision by a board must be made on the basis of evidence which is in the record of the proceeding. A board, however, is expected to use its expert knowledge and experience in evaluating and drawing conclusions from the evidence that is in the record. The board may also take account of and rely on certain facts which do not have to be "proved" since they are "officially noticed"; these facts do not have to be "proved" since they are matters of common knowledge.

- (2) Pursuant to 10 CFR § 2.743(1) "official notice" may be taken of any fact of which judicial notice might be taken by the courts of the United States and of any technical or scientific fact within the knowledge of the Commission as an expert body, if
- (1) the fact is specified in the record or is brought to the attention of the parties before the final decision, and (2) every party adversely affected by the decision is afforded an opportunity to controvert the fact. (For example, a board might take "official notice" of the fact that high level wastes are encountered mainly as liquid residue from fuel reprocessing plants.) Matters which are "officially noticed" by a board furnish the same basis for findings of fact as matters which have been placed in evidence and proved in the usual sense.

(g) Participation by Board Members

- (1) Boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS. The role of the board is to decide whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the provisional construction permit proposed by the Director of Regulation. The board will not conduct a de novo review of the application, but rather, will test the adequacy of the staff's review upon which are based the findings and form of provisional construction permit which the Director of Regulation proposes to issue. If the board believes that additional information is required in the technical presentation in such a case, it would be expected to request the applicant or staff to supplement the

presentation. If a recess should prove necessary to obtain such additional evidence, the recess should ordinarily be postponed until available evidence on all issues has been received.

- (2) A question may be certified to the Commission for its determination when the question is beyond the board's authority, or when a major question of policy or procedure is involved which cannot be resolved except by the Commission and when the prompt and final decision of the question is important for the protection of the public interest or to avoid undue delay or serious prejudice to the interests of a party. For example, a board may find it appropriate to certify novel questions to the Commission as to the regulatory jurisdiction of the Commission or the right of persons to intervene.

(h) Close of Hearing

- (1) A board should give each party the opportunity to make a brief closing statement.

- (2) A schedule should be set by the board and recorded, either in the transcript or by written order, of the dates upon which the parties are directed by the board to file proposed findings of fact and conclusions of law. Proposed transcript corrections and proposed findings and conclusions are ordinarily filed in the first instance by the applicant, with opportunity for response by the regulatory staff and any intervenor. The atomic safety and licensing board need allow only a minimum time for the filing of proposed findings of fact and conclusions of law, briefs, and proposed form of order or decision, as permitted by § 2.754 of 10 CFR Part 2. It is expected that the proposed findings will ordinarily be extremely brief. Since there will be no significant issues in controversy, there will be no need for extensive findings.
- (3) The board should dispose of any additional procedural requests.
- (4) The chairman should formally close the hearing.

IV. Post-Hearing Proceedings, Including the Initial Decision

- (a) A board, acting through the chairman, should dispose of procedural requests made after the close of the hearing, including motions of the parties for correction of the transcript. Responses to requests and motions of the parties are made part of the record by issuance of written orders.

- (b) On receipt of proposed findings and conclusions from the parties, the board should prepare the initial decision. Under the Administrative Procedure Act and the Commission's regulations, the decision should include:
- (1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact, law or discretion presented on the record;
 - (2) All facts officially noticed and relied on, if any, in making the decision;
 - (3) The appropriate ruling, order or denial of relief, with the effective date and time within which exceptions to the initial decision may be filed;
 - (4) The time when the decision becomes final.
- (c) A board will not ordinarily be expected to make formal recital of findings in greater detail than general or ultimate findings on the issues specified in the notice of hearing, namely, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the proposed provisional construction permit. The board will, of course, rule on findings of fact and conclusions of law proposed by the parties. To the extent that there may be disagreements between any of the parties on any particular matters, the board will be expected to make such detailed findings of fact as are appropriate

to support the decisions reached on those matters. If the board finds affirmatively on the issues referred to above the Director of Regulation will, upon his making the proposed findings, issue the permit. If the board finds negatively on those issues, the Director of Regulation will deny the application.

- (d) A board will be expected to discuss concisely, in its decision, the principal safety matters involved in the issuance or denial of the proposed provisional construction permit. A board's initial decision should be prepared with the objective of familiarizing the public and the Commission with the reasons for the board's conclusions as to the sufficiency of the application and the record of the proceeding and the adequacy of the review of the application by the Commission's regulatory staff to support both the findings proposed by the Director of Regulation and the issuance of the provisional construction permit.
- (e) It is expected that ordinarily a board will render its initial decision in an uncontested case within 15 days after its receipt of proposed findings of fact and conclusions of law filed by the parties.
- (f) The initial decision will be transmitted to the Chief, Public Proceedings Branch, Office of the Secretary, for issuance.

- (g) After a board's initial decision is issued, the entire record of the hearing, including the board's initial decision, will be sent to the Commission for review. In the course of this review, the Commission may allow a board's decision to become the final decision of the Commission, may modify a board's decision, or may send the case back to the board for additional testimony on particular points or for further consideration of particular issues.
- (h) After completion of construction, the applicant must obtain an operating license; but a hearing on the operating license will not be held unless demanded by a party or ordered by the Commission. Where a hearing is held at the operating stage, it would be the practice of the Commission to attempt to use the same board which conducted the construction permit hearing.

V. General

- (a) Two members, being a majority of the board, constitute a quorum. The vote of a majority controls in any decision by a board, including rulings during the course of a hearing as well as formal orders and the initial decision. A dissenting member is, of course, free to express his dissent and the reasons for it in a separate opinion for the record.
- (b) The Commission may designate a technically qualified alternate for a board. The alternate will receive copies and become familiar with the application and other documents filed by the parties prior to the start of the hearing. It is expected that the alternate will be constituted by the board as a member of the board in situations where a technically qualified member of the board becomes unavailable for further service prior to the start of the hearing.

VI. Procedures Applicable to Contested Proceedings

- (a) This section sets out certain differences in procedure from those described in Sections I - V above, which are required by the fact that the proceeding is a "contested proceeding." Otherwise, the provisions of Sections I through V of this Statement of General Policy also apply to a "contested proceeding."

(b) Issues to be Decided by Board

The board will, if the proceeding becomes a contested proceeding, make findings on the issues specified in the notice. In a contested proceeding, the board will determine:

- (1) Whether in accordance with the provisions of 10 CFR § 50.35(a)

- (a) The applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;
- (b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;
- (c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve any safety questions; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;

- (2) Whether the applicant is technically qualified to design and construct the proposed facility;
- (3) Whether the applicant is financially qualified to design and construct the proposed facility;
- (4) Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

In considering those issues, however, the board will, as to matters not in controversy, be neither required nor expected to duplicate the review already performed by the Commission's regulatory staff and the ACRS; the board is authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS.

(c) Prehearing Conference

In contested proceedings, the use of the prehearing conference to identify what matters are in controversy and to clarify their relationship to the issues before the board is of primary importance.

(d) Participation by Board Members

In contested proceedings the board will determine controverted matters as well as decide whether the findings required by the Act and the Commission's regulations should be made. Thus, in such proceedings, the board will determine the matters in controversy and may be called upon to make technical judgments of its own on those matters. As to matters which are not in controversy, boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS. Thus, the board need not review those matters already evaluated by the staff which are not in controversy.

(e) Close of Hearing

In contested proceedings, proposed findings of fact and conclusions of law submitted by the parties may be more detailed than in uncontested proceedings. While brevity in such submissions is encouraged, the proposed findings and conclusions should be such as to reflect the positions of the parties submitting them, and the technical and factual bases therefor.

(f) Post-Hearing Proceedings, Including the Initial Decision

(1) In contrast to an uncontested proceeding, the board will itself make the findings on the issues specified in § 2.104 (b) (1) of Part 2 and the reasons or basis for its findings. On the basis of those findings, the initial decision will state the board's determination whether or not a construction permit should be issued and, if so, in what form.

(2) In a contested case, it is expected that a board will ordinarily render its initial decision within 45 days after its receipt of proposed findings of fact and conclusions of law filed by the parties.

6. The section heading of § 50.34 of 10 CFR Part 50 is amended to read as follows:

§ 50.34 Contents of applications; technical information safety analysis report.

7. Paragraph 50.35(a) of 10 CFR Part 50 is revised by amending subparagraphs (1), (2) and (3) to read as follows:

§ 50.35 Issuance of provisional construction permits.

(a) When an applicant has not supplied initially all of the technical information required to complete the application and support the issuance of a construction permit which approves all proposed design features, the Commission may issue a provisional construction permit if the Commission finds that (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public; (2) such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report; (3) safety features or components, if any, which require research and development have been described by the applicant and the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

8. Paragraphs 50.30(c), 50.35(c)(1), 50.36(a) and (c), 50.59(a), (b), (c) and (e) of 10 CFR Part 50 are amended by substituting the words "safety analysis report" for the words "hazards summary report" where they appear.

9. Paragraph 50.59(d) of 10 CFR Part 50 is amended by substituting the words "safety analysis report" for "hazards analysis" in the second sentence.

10. Section 55.20 of 10 CFR Part 55 is amended by substituting the words "safety analysis report" for "hazards summary report" in the second sentence.

11. The section heading of § 115.23 of 10 CFR Part 115 is amended to read as follows:

§ 115.23 Contents of applications; technical information safety analysis report.

12. Paragraph 115.24(a) of 10 CFR Part 115 is revised by amending subparagraphs (1), (2), and (3) to read as follows:

§ 115.24 Issuance of provisional construction authorizations.

(a) When an applicant has not supplied initially all of the technical information required to complete the application and support the issuance of a construction authorization which approves all proposed design features, the Commission may issue a provisional construction authorization if the Commission finds that (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public; (2) such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report; (3) safety features or components, if any, which require research and development have been described by the applicant and the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

13. Paragraphs 115.20(c), 115.24(c)(1), 115.25(a) and (c), 115.45(a), (b), (c) and (e) of 10 CFR Part 115 are amended by substituting the words "safety analysis report" for the words "hazards summary report" where they appear.

14. Paragraph 115.47(d) of 10 CFR Part 115 is amended by substituting the words "safety analysis report" for "hazards analysis" in the second sentence.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

FOR THE ATOMIC ENERGY COMMISSION

By: /SIGNED/ W. B. McCool
W. B. McCool
Secretary to the Commission

Dated at Washington, D. C.
this 17th day of January, 1966.

TITLE 10 - ATOMIC ENERGY
CHAPTER 1 - ATOMIC ENERGY COMMISSION

PART 2 - RULES OF PRACTICE

PART 50 - LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

PART 55 - OPERATORS' LICENSES

PART 115 - PROCEDURES FOR REVIEW OF CERTAIN NUCLEAR REACTORS
EXEMPTED FROM LICENSING REQUIREMENTS

Amendments to Rules of Practice;
Statement of General Policy; Miscellaneous Amendments

On January 21, 1966, the Atomic Energy Commission published for comment (1) proposed amendments of its Rules of Practice, 10 CFR Part 2, (2) a proposed statement of general policy to be appended to that part and (3) miscellaneous proposed amendments of Parts 2, 50, 55, and 115 (31 F.R. 832). The proposed amendments were expected to expedite the Commission's facility licensing procedures and clarify certain provisions in existing regulations. The Commission also published on the same date, under separate notices, proposed amendments to Part 2 relating to intra-agency communications in regulatory adjudications (31 F.R. 830) and a proposed amendment to Part 2 to state precisely when the jurisdiction of a presiding officer terminates (31 F.R. 831).

The proposed amendments to Part 2 in all three notices and the proposed policy statement reflected, in general, several of the recommendations made by a seven-member Regulatory Review Panel, appointed by the Commission to study (1) the programs and procedures for licensing and regulation of reactors and (2) the decision-making process in the Commission's regulatory program. The Panel's report included a number of recommendations in both

areas, particularly in respect to the conduct of "uncontested" licensing proceedings at the construction permit stage.

All interested persons were invited to submit written comments and suggestions for consideration in connection with all of the proposed amendments within 60 days after publication of the notices of proposed rule making in the FEDERAL REGISTER. After careful consideration of the comments received, the Commission has decided to adopt the amendments set forth below, which except as noted, are the same as those set out in the notices of proposed rule making.

Amendments to Part 2

Intra-agency Communications in Initial Licensing Proceedings

The following amendments to §§ 2.4, 2.719 and 2.780 permit consultation and communications between Commissioners and presiding officers (hearing examiners and atomic safety and licensing boards) on the one hand, and the regulatory staff, on the other hand, in initial licensing proceedings other than contested proceedings. Such communication and consultation is also permitted with the staff other than the regulatory staff upon the initiative of the Commissioners. A contested proceeding is defined as one in which there is a controversy between the regulatory staff and the applicant concerning the issuance of the license or any of the terms and conditions thereof or in which a petition to intervene in opposition to the application has been granted or is pending before the Commission. In addition, the following amendments permit presiding officers to consult, in initial licensing proceedings other than contested proceedings, with members of the panel appointed by the Commission from which members of atomic safety and licensing boards are drawn. However, the statement of

general policy set out below (Appendix A to Part 2) includes a statement to the effect that it is expected that such consultation will relate to specific technical matters rather than to matters of broad policy.

The proposed amendments published at 31 F.R. 830 would not have required that communication and consultation between the Commissioners and the staff other than the regulatory staff, in uncontested initial licensing proceedings, be upon the initiative of the Commissioners. Further, the proposed amendments would have permitted Commissioners to consult, in contested initial licensing proceedings, with staff who had not participated in the hearing as witness or counsel, and would have permitted presiding officers to consult with the entire Commission staff in uncontested initial licensing proceedings, and in both contested and uncontested initial licensing proceedings, with the panel from which atomic safety and licensing boards are appointed. Since the Commission appointed a new Regulatory Review Panel on April 4, 1966, to study the conduct of contested proceedings, it has been decided to postpone any amendments to the Commission's rules relating to intra-agency communications in such proceedings until the recommendations of that Panel have been received. Limiting consultation by presiding officers to the regulatory staff will afford them access to those members of the staff who have the greatest familiarity with the subject matter of the proceeding.

The changes will in no way lessen the fairness or objectivity which characterize the Commission's present decision-making process. If either a final or an initial decision rests on fact or opinion obtained as a result of any communication authorized by the amendments, the substance of the communication is required

to be made a matter of public record in the proceeding and opportunity for rebuttal afforded to any party on timely request, thus assuring that decisions will be made on the basis of the public record in the proceeding.

Termination of Jurisdiction of Presiding Officers

The amendment of § 2.717(a) set out below provides that the jurisdiction of presiding officers in adjudicatory proceedings shall terminate when the initial decision becomes the final action of the Commission in the absence of review, or when the Commission, after review, renders a final decision, or when the presiding officer withdraws from the case upon considering himself disqualified, whichever is earliest. The amendment makes clear that presiding officers, who exercise quasi-judicial functions, would have no authority or responsibility to take any action after that time. The amended paragraph is the same as that published for comment at 31 F.R. 831.

Notice of Hearing

The amendment of § 2.104 which follows adds a new paragraph (b) to set out the issues which will be specified in the notice of hearing on applications for a construction permit for a facility under section 103 or section 104 b. of the Atomic Energy Act of 1954, as amended, (the Act) or for a testing facility under section 104 c. of the Act. If such a proceeding is not contested, a de novo evaluation of the application would not be conducted, and the board would determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, both to support the findings proposed to be made by the Director of Regulation, which are necessary under the Act and the Commission's regulations for the issuance of a provisional construction permit, and the issuance of the provisional construction permit as proposed by the Director of

Regulation. If such a proceeding is contested, the board will decide all matters in controversy, and make the findings on the issues specified in the notice of hearing for a contested proceeding.

Except for minor editorial changes, § 2.104(b) is the same as the proposed paragraph published for comment at 31 F.R. 832.

Technically Qualified Alternates for Atomic Safety and Licensing Boards

The amendment of § 2.721 sets out the procedure which will be followed by the Commission in designating a technically qualified alternate for an atomic safety and licensing board and the effect of such designation. The amendment specifies that if a technically qualified member of a board becomes unavailable before the hearing commences, the board may constitute the alternate as a member of the board by notifying the Commission and the alternate.

Effectiveness of Initial Decisions

Section 2.764 has been amended to provide that, except where good cause has been shown by a party why the initial decision should not become immediately effective, an initial decision which directs the issuance or amendment of a construction permit or authorization will be effective immediately, without the necessity of filing a motion for expedited effectiveness, subject to Commission review. The amendment also provides for issuance of the permit authorized within ten days from the effective date of the initial decision. The text of amended § 2.764 is the same as that of the proposed amendment published for comment at 31 F.R. 832.

Statement of General Policy - Appendix A to Part 2

Licensing hearings involving the construction and operation of nuclear reactors and other production and utilization facilities are ordinarily conducted by atomic safety and licensing boards whose establishment by the Commission was authorized by section 191 of the Act. The Commission has authorized such boards to conduct public hearings and make initial decisions in proceedings relating to the granting, suspending, revoking, or amending of licenses or authorizations issued by the Commission. Rules applicable to licensing proceedings conducted by boards (and by hearing examiners) are set forth in 10 CFR Part 2.

The statement of general policy set out below (Appendix A to Part 2) explains the procedures to be followed in the conduct by atomic safety and licensing boards of proceedings involving applications for construction permits on which the Act requires a hearing.

The statement of general policy adopted is the same as that published for comment at 31 F.R. 832 except for minor editorial changes in Sections I(d), II (Prehearing Conference), III (b) (6), (g), VI(b)(1)(c) and (d), the addition of a sentence in Section I, that the notice of hearing will ordinarily announce the date and place of the prehearing conference, and the addition of new Sections V(c) and VI(g) relating to intra-agency communications.

Amendments to Parts 50, 55 and 115

The Commission has adopted certain minor or clarifying amendments of 10 CFR Parts 50 and 115 with respect to (1) the findings necessary to support the issuance of a provisional construction permit or authorization and (2) the terms used to designate the documents which are now termed (a) the "hazards report" submitted by applicants for permits or licenses under

Part 50 or authorizations under Part 115 and (b) the "hazards analysis" prepared by the Commission's regulatory staff.

Paragraphs 50.35(a) and 115.24(a), which authorize issuance of a provisional construction permit or authorization upon the Commission's making certain findings, have been amended to clarify the point that certain design and technical information need not be submitted by the applicant until the operating license stage. Except for minor editorial changes in §§ 50.35(a)(3) and 115.24(a)(3), the text of the amended paragraphs is the same as that of the proposed amendments published for comment at 31 F.R. 832.

In addition, the Commission has amended Parts 50 and 115 (and Parts 2 and 55) to substitute the term "safety analysis report" for "hazards summary report" and "safety analysis" for "hazards analysis" (or the equivalent) where they appear.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act of 1946, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 2, 50, 55 and 115, are published as a document subject to codification, to be effective thirty (30) days after publication in the FEDERAL REGISTER.

1. Section 2.4 of 10 CFR Part 2 is amended by adding a new paragraph (n) to read as follows:

§ 2.4 Definitions.

* * * *

(n) "Contested proceeding" means (1) a proceeding in which there is a controversy between the regulatory staff of the Commission and the applicant for a license concerning the issuance of the license or any of the terms or conditions thereof or (2) a proceeding in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission.

2. Paragraph (b) of § 2.104 of 10 CFR Part 2 is redesignated paragraph (c) and a new paragraph (b) is added to § 2.104 to read as follows:

§ 2.104 Notice of hearing.

* * * *

(b) In the case of an application for a construction permit for a facility on which the Act requires a hearing, the notice of hearing will, unless the Commission determines otherwise, state, in implementation of subparagraph (a)(3) of this section:

(1) That, if the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(1) Whether in accordance with the provisions of § 50.35(a) of this chapter (a) The applicant has described

the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development, have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of the proposed facility; and (ii) taking into consideration the site criteria

contained in Part 100 of this chapter, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;

(ii) Whether the applicant is technically qualified to design and construct the proposed facility;

(iii) Whether the applicant is financially qualified to design and construct the proposed facility;

(iv) Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

(2) That, if the proceeding is not a contested proceeding, the presiding officer will, without conducting a de novo evaluation of the application, determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support affirmative findings on Issues (i) - (iii) specified in subparagraph (1) of this paragraph (b) and a negative finding on Issue (iv) specified in subparagraph (1) of this paragraph (b) proposed to be made and the issuance of the provisional construction permit proposed by the Director of Regulation.

3. Subparagraph 2.105(b)(2) and 2.106(b)(2) of 10 CFR Part 2 are amended by substituting the words "safety analysis" for "safeguards analysis" where they appear.

4. Paragraph (a) of § 2.717 of 10 CFR Part 2 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 Hearing Examiner has such jurisdiction or, if he is unavailable, another hearing examiner has such jurisdiction. A proceeding is deemed to commence when a notice of hearing is issued. When a notice of hearing provides that the presiding officer is to be a hearing examiner, the Chief Hearing Examiner will designate by order the hearing examiner 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.

5. Section 2.719 of 10 CFR Part 2 is amended by revising paragraphs (b) and (c) and adding a new paragraph (d) to read as follows:

§ 2.719 Separation of functions.

* * * *

(b) In any adjudication, the presiding officer may not consult any person other than a member of his staff on any fact in issue unless on notice and opportunity for all parties to participate, except (1) as required for the disposition of ex parte matters as authorized by law and (2) as provided in paragraph (c) of this section.

(c) In any adjudication for the determination of an application for initial licensing, other than a contested proceeding, the presiding officer may consult (1) members of the panel appointed by the Commission from which members of atomic safety and licensing boards are drawn, and (2) the regulatory staff.

(d) Except as provided in paragraph (c) of this section and § 2.780(e), in any case of adjudication, no officer or employee of the Commission who has engaged in the performance of any investigative or prosecuting function in the case or a factually related case may participate or advise in the initial or final decision, except as a witness or

counsel in the proceeding. Where an initial or final decision is stated to rest in whole or in part on fact or opinion obtained as a result of a consultation or communication authorized by paragraph (c) of this section or § 2.780(e), the substance of the communication shall be specified in the record in the proceeding and every party shall be afforded an opportunity to controvert the fact or opinion. If the parties have not had an opportunity to controvert such fact or opinion prior to the filing of the decision, a party may controvert the fact or opinion by filing an exception to the initial decision, or a petition for reconsideration of a final decision, clearly and concisely setting forth the information or argument relied on to show the contrary.

6. Section 2.721 of 10 CFR Part 2 is revised to read as follows:

§ 2.721 Atomic safety and licensing boards.

(a) The Commission may from time to time establish one or more atomic safety and licensing boards, each composed of three members, two of whom will be technically qualified and one of whom will be qualified in the conduct of administrative proceedings, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate.

(b) The Commission may designate a technically qualified alternate for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a technically qualified member of a board becomes unavailable before the hearing commences, the board may constitute the alternate as a member of the board by notifying the Commission and the alternate who will, as of the date of such notification, serve as a member of the board.

(c) An atomic safety and licensing board shall have the duties and may exercise the powers of a presiding officer as granted by § 2.718 and otherwise in this part. At any time when such a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the chief hearing examiner may be exercised with respect to such a proceeding by the chairman of the board having jurisdiction over it.

7. Section 2.764 of 10 CFR Part 2 is revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit.

(a) An initial decision directing the issuance or amendment of a construction permit or construction authorization shall be effective immediately upon

issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to the review thereof and further decision by the Commission upon exceptions filed by any party pursuant to § 2.762 or upon its own motion.

(b) The Director of Regulation, notwithstanding the filing of exceptions, shall issue a construction permit or authorization, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

8. Section 2.780 of 10 CFR Part 2 is amended by revising paragraph (d) and adding a new paragraph (e) to read as follows:

§ 2.780 Ex parte communications.

* * * *

(d) This section does not apply to communications authorized by paragraph (e) of this section, to the disposition of ex parte matters authorized by law, or to communications requested by the Commission concerning:

- (1) Its proprietary functions;
- (2) General health and safety problems and responsibilities of the Commission; or
- (3) The status of proceedings.

(e) In any adjudication for the determination of an application for initial licensing, other than a

contested proceeding, Commissioners, members of their immediate staffs and other AEC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions may consult the regulatory staff, and the regulatory staff may communicate with Commissioners, members of their immediate staffs and other AEC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions. Such communication or consultation in an adjudication for the determination of an application for initial licensing, other than a contested proceeding, shall also be permitted with the staff other than the regulatory staff upon the initiative of the Commissioners.

9. A statement of general policy is appended to 10 CFR Part 2 to read as follows:

APPENDIX A. STATEMENT OF GENERAL POLICY: CONDUCT OF PROCEEDINGS FOR THE ISSUANCE OF CONSTRUCTION PERMITS FOR PRODUCTION AND UTILIZATION FACILITIES FOR WHICH A HEARING IS REQUIRED UNDER SECTION 189 a. OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED.

On December 8, 1962, the Atomic Energy Commission published amendments of its Rules of Practice (10 CFR Part 2) to describe the functions and procedures of its atomic safety and licensing boards (27 F.R. 12184). Those amendments implemented Public Law

87-615 of the 87th Congress, effective August 29, 1962, which was designed to permit greater flexibility and to encourage informality in the conduct of AEC licensing proceedings. The statement of considerations which was published with the amendments to Part 2 included recommendations for the conduct of proceedings by atomic safety and licensing boards, in order to carry out the purpose that hearings in which there are no substantial contested issues among the parties should be conducted more informally than had theretofore been the practice. On November 25, 1963, the Commission issued Press Release F-240 which covered in greater detail the same general subject matter as the statement of considerations and also emphasized the importance which the Commission attached to implementing the informal procedures to the fullest extent practicable in uncontested cases. In the statement of considerations the Commission, recognizing the need for continuing review of its procedures, specifically pointed out that it intended to adopt from time to time any further amendments of its regulations which experience in the operation of atomic safety and licensing boards might indicate as being necessary or desirable.

As a part of that continuing review the Commission announced the appointment of a seven-member Regulatory Review Panel on January 25, 1965, to study (1) the programs and procedures for the licensing and regulation of reactors and (2) the decision-making process in the Commission's regulatory program.

Several of the Panel's recommendations, which were submitted on July 14, 1965, are implemented in the amendments to Part 2 which have been issued simultaneously herewith. As a result of those amendments, the statement of considerations and press release referred to above no longer accurately reflect in detail current Commission rules and policy.

The following Statement of General Policy explains in detail the procedures which the Atomic Energy Commission expects to be followed by atomic safety and licensing boards in the conduct of proceedings relating to the issuance of construction permits for nuclear power and test reactors and other production or utilization facilities for which a hearing is mandatory under section 189 a. of the Atomic Energy Act of 1954, as amended (the Act).^{*} The Statement reflects the Commission's intent that such proceedings be conducted informally and expeditiously and its concern that its procedures maintain sufficient flexibility to accommodate that objective.

Such proceedings are frequently uncontested in that the application for a construction permit is not opposed by an intervenor nor are there any controversies between the Commission's regulatory staff and the applicant concerning the issuance of the permit or the terms and conditions thereof. The provisions of sections I through V of the following Statement are, for the sake of convenience, set out in the framework of the uncontested proceeding. They are applicable also, however, to the contested proceeding except as the context would otherwise indicate, or except as indicated in section VI. Section VI sets out the procedures specifically applicable to the contested proceeding.

^{*}Except as the context may otherwise indicate, this Statement is also generally applicable to the conduct of proceedings for the issuance of operating licenses for such facilities, as well as to authorization proceedings conducted under Part 115, Procedures for Review of Certain Nuclear Reactors Exempted from Licensing Requirements, and to licensing proceedings of the type described in the Statement which may be conducted by a hearing examiner as the presiding officer.

Atomic safety and licensing boards are appointed from time to time by the Atomic Energy Commission to conduct hearings in licensing cases under the authority of section 191. of the Act. Section 191. authorizes the Commission to establish one or more atomic safety and licensing boards to conduct public hearings and to make intermediate or final decisions in administrative proceedings relating to granting, suspending, revoking or amending licenses or authorizations issued by the Commission. It requires that each board consist of two members who are technically qualified and one member who is qualified in the conduct of administrative proceedings. Members for each board may be appointed by the Commission from a panel selected from private life, the staff of the Commission or other federal agencies.

This statement is intended as a guide to the conduct of public hearings under the mandatory hearing requirements of the Act for the information of the public and assistance of members of boards and parties to licensing proceedings. It is not all inclusive. It is intended to explain and summarize certain requirements of governing statutes, the Commission's Rules of Practice, 10 CFR Part 2, and some applicable principles of law and good practice.

I. Preliminary Matters

- (a) A public hearing is announced by the issuance of a notice of hearing signed by the Commission's Secretary, stating the nature of the hearing, its time and place and the issues to be considered. When a hearing is to

be held before a board, the notice of hearing will ordinarily designate the chairman and the other members. The time and place of the prehearing conference will ordinarily be stated in the notice of hearing. The notice of hearing is published in the FEDERAL REGISTER at least 30 days prior to the date of hearing. In addition, a public announcement is issued by the Commission regarding the date and place of the hearing.

(b) In fixing the time and place of any postponed hearing or of the prehearing conference the boards will take into consideration the convenience of board members, the AEC staff and other parties to the extent practicable.

(c) The notice of hearing will, unless the staff opposes the application, include the findings which the Director of Regulation proposes to make, that is, the findings which are necessary under the Act and the Commission's regulations to support the granting of an application, and the form of provisional construction permit which he proposes to issue. The Director of Regulation will, of course, be free to propose different findings on the basis of new information brought out at the hearing.

(d) The notice of hearing will state that the board will determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory

staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the proposed provisional construction permit. The notice of hearing will also state that the board will not conduct a de novo evaluation of the application.

(e) Prior to a hearing, board members should review and become familiar with:

The record of any relevant prior proceedings in the case, including initial decisions and Commission orders. The Advisory Committee on Reactor Safeguards (ACRS) report, the staff safety analysis, the application and all other papers filed in the proceeding. The Commission's Rules of Practice, 10 CFR Part 2, and such other regulations or published statements of policy of the Commission as may be pertinent to the proceedings.

(f) At any time when a board is in existence but is not actually in session, the chairman has all the powers of the board to take action on procedural matters. The Chairman may have occasion, when the board is not in session, to dispose of preliminary procedural requests including, among other things, motions by parties relating to the conduct of the hearing. He may wish to discuss such requests with the other members of the board before ruling on them. No interlocutory appeal* may be taken by a party as a matter of right

* An interlocutory appeal means an appeal to the Commission from a ruling made by the board during the time between the issuance of a notice of hearing and the issuance of the initial decision.

from a ruling of the chairman or the board. The board should refer the challenged ruling to the Commission for a final decision if, in its judgment, a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense. This authority should be exercised sparingly, and only when deemed essential in fairness to the parties or the public.

II. Prehearing Conference

- (a) A prehearing conference, which is authorized in § 2.752 of 10 CFR Part 2, serves a vital function in defining substantive issues and in settling matters of procedure before the start of the hearing. A prehearing conference should be regarded as an informal meeting of the board with the parties to facilitate and expedite the conduct of the hearing where (a) the significant safety questions can be identified and discussed, (b) any matters in controversy between the parties can be clearly identified, and (c) any preliminary matters, such as identifying the witnesses to be presented by the parties or requested by the board; specifying the order and method of presentation of their testimony; scheduling the exchange of prepared testimony and documentary evidence; determining the contents of the decisional record and the method of designating exhibits; discussing procedures to be followed at the hearing; and arriving at such agreements as will aid in the conduct and expeditious disposition of the proceeding, can be disposed of. The Commission strongly

encourages their use and expects that a prehearing conference will ordinarily be held in each licensing proceeding before an atomic safety and licensing board. However, the prehearing conference is not a substitute for the hearing and matters discussed and agreements reached therein become a part of the decisional record only to the extent they are specifically incorporated in the decisional record by order or otherwise.

(b) The timing of the prehearing conference will depend on the nature of the case. When feasible, it will assist preparation for the hearing if the prehearing conference is held well in advance of the hearing. The date and place of the prehearing conference will usually be announced in the notice of hearing. Prehearing conferences are open to the public except under exceptional circumstances involving matters such as those referred to in 10 CFR § 2.790(a) and (b) ("company confidential" information; classified information; and certain privileged information not normally a part of the hearing record.)

(c) It is expected that a transcript of each prehearing conference will be prepared.

(d) Any agreements reached or decisions made at the conference will be incorporated promptly in the formal record of the hearing without prejudice to the rights of any subsequent intervenor. The board will be expected at

the opening of the hearing to state on the record that such a conference has been held and the time and place of the meeting and the persons who attended.

(e) The applicant, the regulatory staff and other parties will ordinarily provide each other and the board with copies of prepared testimony in advance of the hearing. A schedule may be established at the prehearing conference for exchange of prepared testimony. The applicant ordinarily files a summary of his application, including a summary description of the reactor and his evaluation of the considerations important to safety, and the staff files a safety analysis prior to the hearing. These may constitute the testimony of witnesses sworn at the hearing. All of these documents and prepared testimony are filed in the Commission's Public Document Room and are available for public inspection.

III. The Hearing

The following procedures should be observed in the conduct of public hearings:

(a) Preliminary

- (1) A verbatim transcript will be made of the hearing.
- (2) The chairman should convene the hearing by stating the title of the proceeding and describing its nature.
- (3) He should state the date, time and place at which the prehearing conference was held, and identify the persons participating in it. He should summarize the prehearing order, or, if there is

no written prehearing order, the results of the prehearing conference.

- (4) He should explain the procedures for the conduct of the hearing. He should request that counsel for the parties identify themselves on the record, and provide them with the opportunity to make opening statements of their respective positions.
- (5) He should describe, for the benefit of members of the public who may be present, the respective roles of the board, the ACRS and the staff, and the Commission procedures for review of the decision. He should also describe the continuing review and inspection surveillance conducted by the Commission after a construction permit or an operating license has been issued.

(b) Intervention and Limited Appearances

- (1) The chairman should call attention to the provisions of 10 CFR §§ 2.714 Intervention and 2.715 Participation by a person not a party (limited appearance). He should briefly explain these provisions and the rights of persons who may qualify as intervenors or as persons to be permitted to make limited appearances. He should call attention to the provision of 10 CFR § 2.714 (d) that the granting of a petition to intervene does not change or enlarge the issues specified in the notice of hearing unless expressly provided in the order allowing intervention.

- (2) The chairman should inquire of those in attendance whether there are any who wish to participate in the hearing by intervention or by limited appearance.
- (3) The board should rule on each request to participate in the hearing on either basis. The Commission's rules require that a petition for intervention be filed at least seven days prior to the start of the hearing. A board has general authority to extend the time for good cause with respect to allowing intervention.
- (4) As required by § 2,714 of 10 CFR Part 2, a person who wishes to intervene must set forth, in a petition for leave to intervene, his interest in the proceeding, how the interest may be affected by Commission action, and his contentions. After consideration of any answers, the board will rule on the petition. In any event, the board should not permit enlarging of the issues, or receive evidence from an intervenor, with respect to matters beyond the jurisdiction of the Commission.
- (5) Those permitted to intervene become parties to the proceeding. Persons permitted to make limited appearances do not become parties, but should be permitted to make statements at such stage of the proceeding as the board may consider appropriate. A person making a limited appearance may only make an oral or written statement on the record, and

may not participate in the proceeding in any other way. The board may wish to limit the length of oral statements. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance for the purpose of making a statement.

(6) It is important that the board make clear to the members of the public seeking to participate the difference between intervention and limited appearance. An intervenor, unlike a person making a limited appearance, has all the rights of the applicant and the staff to participate fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. A person making a limited appearance may want not only to state his position, but to raise questions which he would like to have answered. This should be permitted to the extent the questions are within the scope of the proceeding as defined by the issues set out in the notice of hearing, the prehearing conference report, and any later orders. Usually such persons should be asked to make their statements and raise their questions early in the proceeding so that the board will have an opportunity to be sure that relevant and meritorious questions are properly dealt with during the course of the hearing.

- (7) It is the Commission's view that the rules governing intervention and limited appearances are necessary in the interest of orderly proceedings. The Commission also believes that through these two methods of public participation all members of the public are assured of the right to participate by a method appropriate to their interest in the matter. This should be fully explained at the beginning of the hearing. In some cases the board may feel that it must deny an application to intervene but that it can still accommodate the desire of the person involved by allowing him to make a statement and raise questions under the limited appearance rule.
- (8) Boards have considerable discretion as to the manner in which they accommodate their conduct of the hearing to local public interest and the desires of local citizens to be heard. Particularly in cases where it is evident that there is local concern as to the safety of the proposed plant, boards should so conduct the hearing as to give appropriate opportunity for local citizens to express their views, while at the same time protecting the legal interest of all parties and the public interest in an orderly and efficient licensing process. Boards should give full public recognition to the fact that utilization of such opportunity is one of the

important reasons why public hearings are held by the Commission and are held in the locality of interest.

(c) Opening Statements and Testimony

- (1) In order to facilitate public understanding of the proceeding it is anticipated that the applicant (who has the burden of proof in licensing proceedings), will, at an appropriate time early in the proceeding, make an oral statement describing in terms that will be readily understood by the public, the manner in which the safety of the public will be assured, by such provisions as siting, safety features of the reactor, including engineered safeguards, etc. It may be that the "summary description of the reactor and * * * evaluation of the considerations important to safety" referred to at paragraph (e) of section II above, will satisfactorily serve as the basis for such oral statement.
- (2) The staff will also, early in the proceeding but after the applicant has made the oral statement referred to in the preceding paragraph, make an oral statement describing the staff's evaluation of the application and the reasons for the conclusions reached by the staff, and summarizing the various steps taken by the staff and the ACRS in their review of the application.

- (3) The testimony of all witnesses will be given under oath. These witnesses may be collectively sworn at the opening of the hearing or if additional witnesses are called upon to testify at a subsequent stage they may be sworn at the time of their appearance.
- (4) There is ordinarily no need for oral recital of prepared testimony unless the board considers that some useful purpose will be served. Each witness presented by a party may be questioned by other parties and by the board. Unless testimony is being taken on a roundtable basis or there is some occasion for clarification of testimony as rendered, the board may wish to reserve its questions until the parties have completed questioning of the witnesses, since counsel for the respective parties will generally be prepared to develop the various lines of pertinent questions.
- (5) Opportunity should be assured, on an orderly basis, for each party to comment on statements made by other parties.
- (6) The proceedings should be conducted as expeditiously and informally as practicable, without impairing the development of a clear and adequate record. The order of presenting testimony may be freely varied in the conduct

of the hearing. The board may find it helpful to take expert testimony from witnesses on a roundtable basis after the receipt in evidence of prepared written testimony.

- (7) Objections may be made by counsel to any questions or any line of questioning, and should be ruled upon by the board. The board may admit the testimony, may sustain the objection, or may receive the testimony, reserving for later determination the question of admissibility. In passing on objections, the board, while not bound to view proffered testimony according to its admissibility under strict application of the rules of evidence in judicial proceedings, should exclude testimony that is clearly irrelevant to issues in the case, or that pertains to matters outside the jurisdiction of the board or the Atomic Energy Commission. Examples of matters which are considered irrelevant to the issues in the case or outside the jurisdiction of the board or the Atomic Energy Commission include the thermal effects (as opposed to the radiological effects) of the facility operation on the environment; the effect of the construction of the facility on the recreational, economic or political activities of the area near the site; and matters of aesthetics with respect to the proposed construction.

(d) Documentary Evidence

(1) Documentary evidence may be offered in evidence as provided in 10 CFR § 2.743.

(2) Such evidence offered during the course of the hearing should be described by counsel, and furnished to the reporter for marking. Documents offered for marking should be numbered in order of receipt. On identification of a document, it may be offered in evidence.

(e) Record

The transcript of testimony and the exhibits, together with all of the papers and requests filed in a proceeding, constitute the record for decision, except to the extent that official notice is taken pursuant to the following paragraph.

(f) Official Notice

(1) "Official notice" is a legal term of art. Generally speaking, a decision by a board must be made on the basis of evidence which is in the record of the proceeding. A board, however, is expected to use its expert knowledge and experience in evaluating and drawing conclusions from the evidence that is in the record. The board may also take account of and rely on certain facts which do not have to be "proved" since they are "officially noticed;" these facts do not have to be "proved" since they are matters of common knowledge.

(2) Pursuant to 10 CFR § 2.743(1) "official notice" may be taken of any fact of which judicial notice might be taken by the courts of the United States and of any technical or scientific fact within the knowledge of the Commission as an expert body, if (1) the fact is specified in the record or is brought to the attention of the parties before the final decision, and (2) every party adversely affected by the decision is afforded an opportunity to controvert the fact. (For example, a board might take "official notice" of the fact that high level wastes are encountered mainly as liquid residue from fuel reprocessing plants.) Matters which are "officially noticed" by a board furnish the same basis for findings of fact as matters which have been placed in evidence and proved in the usual sense.

(g) Participation by Board Members

(1) Boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS. The role of the board is to decide whether the application and the record of the proceeding contain sufficient information, and the review of

the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the provisional construction permit proposed by the Director of Regulation. The board will not conduct a de novo evaluation of the application, but rather, will test the adequacy of the staff's review upon which are based the findings and form of provisional construction permit which the Director of Regulation proposes to issue. If the board believes that additional information is required in the technical presentation in such a case, it would be expected to request the applicant or staff to supplement the presentation. If a recess should prove necessary to obtain such additional evidence, the recess should ordinarily be postponed until available evidence on all issues has been received.

(2) A question may be certified to the Commission for its determination when the question is beyond the board's authority, or when a major or novel question of policy, law or procedure is involved which cannot be resolved except by the Commission and when the prompt and final decision of the question is important for the protection of the public interest or to avoid undue delay or serious

prejudice to the interests of a party. For example, a board may find it appropriate to certify novel questions to the Commission as to the regulatory jurisdiction of the Commission or the right of persons to intervene.

(h) Close of Hearing

- (1) A board should give each party the opportunity to make a brief closing statement.
- (2) A schedule should be set by the board and recorded, either in the transcript or by written order, of the dates upon which the parties are directed by the board to file proposed findings of fact and conclusions of law. Proposed transcript corrections and proposed findings and conclusions are ordinarily filed in the first instance by the applicant, with opportunity for response by the regulatory staff and any intervenor. The atomic safety and licensing board need allow only a minimum time for the filing of proposed findings of fact and conclusions of law, briefs, and proposed form of order or decision, as permitted by § 2.754 of 10 CFR Part 2. It is expected that the proposed findings will ordinarily be extremely brief. Since there will be no significant issues in controversy, there will be no need for extensive findings.
- (3) The board should dispose of any additional procedural requests.
- (4) The chairman should formally close the hearing.

IV. Post-Hearing Proceedings, Including the Initial Decision

- (a) A board, acting through the chairman, should dispose of procedural requests made after the close of the hearing, including motions of the parties for correction of the transcript. Responses to requests and motions of the parties are made part of the record by issuance of written orders.
- (b) On receipt of proposed findings and conclusions from the parties, the board should prepare the initial decision. Under the Administrative Procedure Act and the Commission's regulations, the decision should include:
 - (1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact, law or discretion presented on the record;
 - (2) All facts officially noticed and relied on, if any, in making the decision;
 - (3) The appropriate ruling, order or denial of relief, with the effective date and time within which exceptions to the initial decision may be filed;
 - (4) The time when the decision becomes final.
- (c) A board will not ordinarily be expected to make formal recital of findings in greater detail than general or ultimate findings on the issues specified in the notice of hearing, namely, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's

regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the proposed provisional construction permit. The board will, of course, rule on findings of fact and conclusions of law proposed by the parties. To the extent that there may be disagreements between any of the parties on any particular matters, the board will be expected to make such detailed findings of fact as are appropriate to support the decisions reached on those matters. If the board finds affirmatively on the issues referred to above the Director of Regulation will, upon his making the proposed findings, issue the permit. If the board finds negatively on those issues, the Director of Regulation will deny the application.

- (d) A board will be expected to discuss concisely, in its decision, the principal safety matters involved in the issuance or denial of the proposed provisional construction permit. A board's initial decision should be prepared with the objective of familiarizing the public and the Commission with the reasons for the board's conclusions as to the sufficiency of the application and the record of the proceeding and the adequacy of the review of the application by the Commission's regulatory staff to support both the findings proposed by the Director of Regulation and the issuance of the provisional construction permit.

- (e) It is expected that ordinarily a board will render its initial decision in an uncontested case within 15 days after its receipt of proposed findings of fact and conclusions of law filed by the parties.
- (f) The initial decision will be transmitted to the Chief, Public Proceedings Branch, Office of the Secretary, for issuance.
- (g) After a board's initial decision is issued, the entire record of the hearing, including the board's initial decision, will be sent to the Commission for review. In the course of this review, the Commission may allow a board's decision to become the final decision of the Commission, may modify a board's decision, or may send the case back to the board for additional testimony on particular points or for further consideration of particular issues.
- (h) After completion of construction, the applicant must obtain an operating license; but a hearing on the operating license will not be held unless demanded by a party or ordered by the Commission. Where a hearing is held at the operating stage, it would be the practice of the Commission to attempt to use the same board which conducted the construction permit hearing.

V. General

- (a) Two members, being a majority of the board, constitute a quorum. The vote of a majority controls in any decision by a board, including rulings during the course

of a hearing as well as formal orders and the initial decision. A dissenting member is, of course, free to express his dissent and the reasons for it in a separate opinion for the record.

(b) The Commission may designate a technically qualified alternate for a board. The alternate will receive copies and become familiar with the application and other documents filed by the parties prior to the start of the hearing. It is expected that the alternate will be constituted by the board as a member of the board in situations where a technically qualified member of the board becomes unavailable for further service prior to the start of the hearing.

(c) 10 CFR §§ 2.719 and 2.780 specify the conditions on which there is permitted to be consultation between Commissioners and boards, on the one hand, and the staff, on the other hand, in initial licensing proceedings other than contested proceedings. 10 CFR § 2.719 also permits a board, in the same type of proceeding, to consult with members of the panel from which members of the boards are drawn. However, it is expected that such consultation by a board, when it occurs, will relate to specific technical matters rather than to matters of broad policy.

VI. Procedures Applicable to Contested Proceedings

(a) This section sets out certain differences in procedure from those described in sections I - V above, which are required by the fact that the proceeding is a "contested proceeding." Otherwise, the provisions of sections I through V of this Statement of General Policy also apply to a "contested proceeding."

(b) Issues to be Decided by Board

The board will, if the proceeding becomes a contested proceeding, make findings on the issues specified in the notice. In a contested proceeding, the board will determine:

(1) Whether in accordance with the provisions of 10 CFR § 50.35(a)

(a) The applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features and components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility, and (ii) taking into consideration

the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public.

- (2) Whether the applicant is technically qualified to design and construct the proposed facility;
- (3) Whether the applicant is financially qualified to design and construct the proposed facility;
- (4) Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

In considering those issues, however, the board will, as to matters not in controversy, be neither required nor expected to duplicate the review already performed by the Commission's regulatory staff and the ACRS; the board is authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS.

(c) Prehearing Conference

In contested proceedings, the use of the prehearing conference to identify what matters are in controversy and to clarify their relationship to the issues before the board is of primary importance.

(d) Participation by Board Members

In contested proceedings, the board will determine controverted matters as well as decide whether the findings required by the Act and the Commission's regulations should be made. Thus, in such proceedings, the board will determine the matters in controversy and may be called upon to make technical judgments of its own on those matters. As to matters which are not in controversy, boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS. Thus, the board need not evaluate those matters already evaluated by the staff which are not in controversy.

(e) Close of Hearing

In contested proceedings, proposed findings of fact and conclusions of law submitted by the parties may be more detailed than in uncontested proceedings. While brevity in such submissions is encouraged, the proposed findings and conclusions should be such as to reflect the position of the parties submitting them, and the technical and factual basis therefor.

(f) Post-Hearing Proceedings, Including the Initial Decision

(1) In contrast to an uncontested proceeding, the board will itself make the findings on the issues specified in § 2.104(b)(1) of Part 2 and the

reasons or basis for its findings. On the basis of those findings, the initial decision will state the board's determination whether or not a construction permit should be issued and, if so, in what form.

(2) In a contested case, it is expected that a board will ordinarily render its initial decision within 45 days after its receipt of proposed findings of fact and conclusions of law filed by the parties.

(g) The intra-agency consultation and communications referred to in Section V(c) are not permitted in contested proceedings.

10. The section heading of § 50.34 of 10 CFR Part 50 is amended to read as follows:

§ 50.34. Contents of applications; technical information safety analysis report.

11. Subparagraphs (1), (2) and (3) of § 50.35(a) of 10 CFR Part 50 are amended to read as follows:

§ 50.35 Issuance of provisional construction permits.

(a) When an applicant has not supplied initially all of the technical information required to complete the application and support the issuance of a construction permit which approves all proposed design features, the Commission may issue a provisional construction permit if the Commission finds that (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the

health and safety of the public; (2) such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report; (3) safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components.

12. Paragraphs 50.30(c), 50.35(c)(1), 50.36(a) and (c), 50.59(a), (b), (c) and (e) of 10 CFR Part 50 are amended by substituting the words "safety analysis report" for the words "hazards summary report" where they appear.

13. Paragraph 50.59(d) of 10 CFR Part 50 is amended by substituting the words "safety analysis report" for "hazards analysis" in the second sentence.

14. Section 55.20 of 10 CFR Part 55 is amended by substituting the words "safety analysis report" for "hazards summary report" in the second sentence.

15. The section heading of § 115.23 of 10 CFR Part 115 is amended to read as follows:

§ 115.23 Contents of applications; technical information safety analysis report.

16. Subparagraphs (1), (2) and (3) of § 115.24(a) of 10 CFR Part 115 are amended to read as follows:

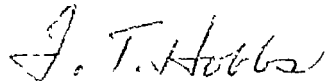
§ 115.24 Issuance of provisional construction authorizations.

(a) When an applicant has not supplied initially all of the technical information required to complete the application and support the issuance of a construction authorization which approves all proposed design features, the Commission may issue a provisional construction authorization if the Commission finds that (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public; (2) such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report; (3) safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

17. Paragraphs 115.20(c), 115.24(c)(1), 115.25(a) and (c), 115.45(a), (b) and (c) and (e) of 10 CFR Part 115 are amended by substituting the words "safety analysis report" for the words "hazards summary report" where they appear.

18. Paragraph 115.47(d) of 10 CFR Part 115 is amended by substituting the words "safety analysis report" for "hazards analysis" in the second sentence.

FOR THE ATOMIC ENERGY COMMISSION



F. T. Hobbs
Acting Secretary

Dated at Germantown, Maryland,
this 23rd day of September, 1966.

TITLE 10 - ATOMIC ENERGY
CHAPTER 1 - ATOMIC ENERGY COMMISSION

PART 2 - RULES OF PRACTICE

PART 50 - LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

PART 55 - OPERATORS' LICENSES

PART 115 - PROCEDURES FOR REVIEW OF CERTAIN NUCLEAR REACTORS
EXEMPTED FROM LICENSING REQUIREMENTS

Amendments to Rules of Practice;
Statement of General Policy; Miscellaneous Amendments

On January 21, 1966, the Atomic Energy Commission published for comment (1) proposed amendments of its Rules of Practice, 10 CFR Part 2, (2) a proposed statement of general policy to be appended to that part and (3) miscellaneous proposed amendments of Parts 2, 50, 55, and 115 (31 F.R. 832). The proposed amendments were expected to expedite the Commission's facility licensing procedures and clarify certain provisions in existing regulations. The Commission also published on the same date, under separate notices, proposed amendments to Part 2 relating to intra-agency communications in regulatory adjudications (31 F.R. 830) and a proposed amendment to Part 2 to state precisely when the jurisdiction of a presiding officer terminates (31 F.R. 831).

The proposed amendments to Part 2 in all three notices and the proposed policy statement reflected, in general, several of the recommendations made by a seven-member Regulatory Review Panel, appointed by the Commission to study (1) the programs and procedures for licensing and regulation of reactors and (2) the decision-making process in the Commission's regulatory program. The Panel's report included a number of recommendations in both

areas, particularly in respect to the conduct of "uncontested" licensing proceedings at the construction permit stage.

All interested persons were invited to submit written comments and suggestions for consideration in connection with all of the proposed amendments within 60 days after publication of the notices of proposed rule making in the FEDERAL REGISTER. After careful consideration of the comments received, the Commission has decided to adopt the amendments set forth below, which except as noted, are the same as those set out in the notices of proposed rule making.

Amendments to Part 2

Intra-agency Communications in Initial Licensing Proceedings

The following amendments to §§ 2.4, 2.719 and 2.780 permit consultation and communications between Commissioners and presiding officers (hearing examiners and atomic safety and licensing boards) on the one hand, and the regulatory staff, on the other hand, in initial licensing proceedings other than contested proceedings. Such communication and consultation is also permitted with the staff other than the regulatory staff upon the initiative of the Commissioners. A contested proceeding is defined as one in which there is a controversy between the regulatory staff and the applicant concerning the issuance of the license or any of the terms and conditions thereof or in which a petition to intervene in opposition to the application has been granted or is pending before the Commission. In addition, the following amendments permit presiding officers to consult, in initial licensing proceedings other than contested proceedings, with members of the panel appointed by the Commission from which members of atomic safety and licensing boards are drawn. However, the statement of

general policy set out below (Appendix A to Part 2) includes a statement to the effect that it is expected that such consultation will relate to specific technical matters rather than to matters of broad policy.

The proposed amendments published at 31 F.R. 830 would not have required that communication and consultation between the Commissioners and the staff other than the regulatory staff, in uncontested initial licensing proceedings, be upon the initiative of the Commissioners. Further, the proposed amendments would have permitted Commissioners to consult, in contested initial licensing proceedings, with staff who had not participated in the hearing as witness or counsel, and would have permitted presiding officers to consult with the entire Commission staff in uncontested initial licensing proceedings, and in both contested and uncontested initial licensing proceedings, with the panel from which atomic safety and licensing boards are appointed. Since the Commission appointed a new Regulatory Review Panel on April 4, 1966, to study the conduct of contested proceedings, it has been decided to postpone any amendments to the Commission's rules relating to intra-agency communications in such proceedings until the recommendations of that Panel have been received. Limiting consultation by presiding officers to the regulatory staff will afford them access to those members of the staff who have the greatest familiarity with the subject matter of the proceeding.

The changes will in no way lessen the fairness or objectivity which characterize the Commission's present decision-making process. If either a final or an initial decision rests on fact or opinion obtained as a result of any communication authorized by the amendments, the substance of the communication is required

to be made a matter of public record in the proceeding and opportunity for rebuttal afforded to any party on timely request, thus assuring that decisions will be made on the basis of the public record in the proceeding.

Termination of Jurisdiction of Presiding Officers

The amendment of § 2.717(a) set out below provides that the jurisdiction of presiding officers in adjudicatory proceedings shall terminate when the initial decision becomes the final action of the Commission in the absence of review, or when the Commission, after review, renders a final decision, or when the presiding officer withdraws from the case upon considering himself disqualified, whichever is earliest. The amendment makes clear that presiding officers, who exercise quasi-judicial functions, would have no authority or responsibility to take any action after that time. The amended paragraph is the same as that published for comment at 31 F.R. 831.

Notice of Hearing

The amendment of § 2.104 which follows adds a new paragraph (b) to set out the issues which will be specified in the notice of hearing on applications for a construction permit for a facility under section 103 or section 104 b. of the Atomic Energy Act of 1954, as amended, (the Act) or for a testing facility under section 104 c. of the Act. If such a proceeding is not contested, a de novo evaluation of the application would not be conducted, and the board would determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, both to support the findings proposed to be made by the Director of Regulation, which are necessary under the Act and the Commission's regulations for the issuance of a provisional construction permit, and the issuance of the provisional construction permit as proposed by the Director of

Regulation. If such a proceeding is contested, the board will decide all matters in controversy, and make the findings on the issues specified in the notice of hearing for a contested proceeding.

Except for minor editorial changes, § 2.104(b) is the same as the proposed paragraph published for comment at 31 F.R. 832.

Technically Qualified Alternates for Atomic Safety and Licensing Boards

The amendment of § 2.721 sets out the procedure which will be followed by the Commission in designating a technically qualified alternate for an atomic safety and licensing board and the effect of such designation. The amendment specifies that if a technically qualified member of a board becomes unavailable before the hearing commences, the board may constitute the alternate as a member of the board by notifying the Commission and the alternate.

Effectiveness of Initial Decisions

Section 2.764 has been amended to provide that, except where good cause has been shown by a party why the initial decision should not become immediately effective, an initial decision which directs the issuance or amendment of a construction permit or authorization will be effective immediately, without the necessity of filing a motion for expedited effectiveness, subject to Commission review. The amendment also provides for issuance of the permit authorized within ten days from the effective date of the initial decision. The text of amended § 2.764 is the same as that of the proposed amendment published for comment at 31 F.R. 832.

Statement of General Policy - Appendix A to Part 2

Licensing hearings involving the construction and operation of nuclear reactors and other production and utilization facilities are ordinarily conducted by atomic safety and licensing boards whose establishment by the Commission was authorized by section 191 of the Act. The Commission has authorized such boards to conduct public hearings and make initial decisions in proceedings relating to the granting, suspending, revoking, or amending of licenses or authorizations issued by the Commission. Rules applicable to licensing proceedings conducted by boards (and by hearing examiners) are set forth in 10 CFR Part 2.

The statement of general policy set out below (Appendix A to Part 2) explains the procedures to be followed in the conduct by atomic safety and licensing boards of proceedings involving applications for construction permits on which the Act requires a hearing.

The statement of general policy adopted is the same as that published for comment at 31 F.R. 832 except for minor editorial changes in Sections I(d), II (Prehearing Conference), III (b) (6), (g), VI(b)(1)(c) and (d), the addition of a sentence in Section I, that the notice of hearing will ordinarily announce the date and place of the prehearing conference, and the addition of new Sections V(c) and VI(g) relating to intra-agency communications.

Amendments to Parts 50, 55 and 115

The Commission has adopted certain minor or clarifying amendments of 10 CFR Parts 50 and 115 with respect to (1) the findings necessary to support the issuance of a provisional construction permit or authorization and (2) the terms used to designate the documents which are now termed (a) the "hazards report" submitted by applicants for permits or licenses under

Part 50 or authorizations under Part 115 and (b) the "hazards analysis" prepared by the Commission's regulatory staff.

Paragraphs 50.35(a) and 115.24(a), which authorize issuance of a provisional construction permit or authorization upon the Commission's making certain findings, have been amended to clarify the point that certain design and technical information need not be submitted by the applicant until the operating license stage. Except for minor editorial changes in §§ 50.35(a)(3) and 115.24(a)(3), the text of the amended paragraphs is the same as that of the proposed amendments published for comment at 31 F.R. 832.

In addition, the Commission has amended Parts 50 and 115 (and Parts 2 and 55) to substitute the term "safety analysis report" for "hazards summary report" and "safety analysis" for "hazards analysis" (or the equivalent) where they appear.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act of 1946, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 2, 50, 55 and 115, are published as a document subject to codification, to be effective thirty (30) days after publication in the FEDERAL REGISTER.

1. Section 2.4 of 10 CFR Part 2 is amended by adding a new paragraph (n) to read as follows:

§ 2.4 Definitions.

* * * *

(n) "Contested proceeding" means (1) a proceeding in which there is a controversy between the regulatory staff of the Commission and the applicant for a license concerning the issuance of the license or any of the terms or conditions thereof or (2) a proceeding in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission.

2. Paragraph (b) of § 2.104 of 10 CFR, Part 2 is redesignated paragraph (c) and a new paragraph (b) is added to § 2.104 to read as follows:

§ 2.104 Notice of hearing.

* * * *

(b) In the case of an application for a construction permit for a facility on which the Act requires a hearing, the notice of hearing will, unless the Commission determines otherwise, state, in implementation of subparagraph (a)(3) of this section:

(1) That, if the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(1) Whether in accordance with the provisions of § 50.35(a) of this chapter (a) The applicant has described

the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development, have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of the proposed facility; and (ii) taking into consideration the site criteria

contained in Part 100 of this chapter, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;

(ii) Whether the applicant is technically qualified to design and construct the proposed facility;

(iii) Whether the applicant is financially qualified to design and construct the proposed facility;

(iv) Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

(2) That, if the proceeding is not a contested proceeding, the presiding officer will, without conducting a de novo evaluation of the application, determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support affirmative findings on Issues (i) - (iii) specified in subparagraph (1) of this paragraph (b) and a negative finding on Issue (iv) specified in subparagraph (1) of this paragraph (b) proposed to be made and the issuance of the provisional construction permit proposed by the Director of Regulation.

3. Subparagraph 2.105(b)(2) and 2.106(b)(2) of 10 CFR Part 2 are amended by substituting the words "safety analysis" for "safeguards analysis" where they appear.

4. Paragraph (a) of § 2.717 of 10 CFR Part 2 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 Hearing Examiner has such jurisdiction or, if he is unavailable, another hearing examiner has such jurisdiction. A proceeding is deemed to commence when a notice of hearing is issued. When a notice of hearing provides that the presiding officer is to be a hearing examiner, the Chief Hearing Examiner will designate by order the hearing examiner 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.

5. Section 2.719 of 10 CFR Part 2 is amended by revising paragraphs (b) and (c) and adding a new paragraph (d) to read as follows:

§ 2.719 Separation of functions.

* * * *

(b) In any adjudication, the presiding officer may not consult any person other than a member of his staff on any fact in issue unless on notice and opportunity for all parties to participate, except (1) as required for the disposition of ex parte matters as authorized by law and (2) as provided in paragraph (c) of this section.

(c) In any adjudication for the determination of an application for initial licensing, other than a contested proceeding, the presiding officer may consult (1) members of the panel appointed by the Commission from which members of atomic safety and licensing boards are drawn, and (2) the regulatory staff.

(d) Except as provided in paragraph (c) of this section and § 2.780(e), in any case of adjudication, no officer or employee of the Commission who has engaged in the performance of any investigative or prosecuting function in the case or a factually related case may participate or advise in the initial or final decision, except as a witness or

counsel in the proceeding. Where an initial or final decision is stated to rest in whole or in part on fact or opinion obtained as a result of a consultation or communication authorized by paragraph (c) of this section or § 2.780(e), the substance of the communication shall be specified in the record in the proceeding and every party shall be afforded an opportunity to controvert the fact or opinion. If the parties have not had an opportunity to controvert such fact or opinion prior to the filing of the decision, a party may controvert the fact or opinion by filing an exception to the initial decision, or a petition for reconsideration of a final decision, clearly and concisely setting forth the information or argument relied on to show the contrary.

6. Section 2.721 of 10 CFR Part 2 is revised to read as follows:

§ 2.721 Atomic safety and licensing boards.

(a) The Commission may from time to time establish one or more atomic safety and licensing boards, each composed of three members, two of whom will be technically qualified and one of whom will be qualified in the conduct of administrative proceedings, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate.

(b) The Commission may designate a technically qualified alternate for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a technically qualified member of a board becomes unavailable before the hearing commences, the board may constitute the alternate as a member of the board by notifying the Commission and the alternate who will, as of the date of such notification, serve as a member of the board.

(c) An atomic safety and licensing board shall have the duties and may exercise the powers of a presiding officer as granted by § 2.718 and otherwise in this part. At any time when such a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the chief hearing examiner may be exercised with respect to such a proceeding by the chairman of the board having jurisdiction over it.

7. Section 2.764 of 10 CFR Part 2 is revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit.

(a) An initial decision directing the issuance or amendment of a construction permit or construction authorization shall be effective immediately upon

issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to the review thereof and further decision by the Commission upon exceptions filed by any party pursuant to § 2.762 or upon its own motion.

(b) The Director of Regulation, notwithstanding the filing of exceptions, shall issue a construction permit or authorization, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

8. Section 2.780 of 10 CFR Part 2 is amended by revising paragraph (d) and adding a new paragraph (e) to read as follows:

§ 2.780 Ex parte communications.

* * * *

(d) This section does not apply to communications authorized by paragraph (e) of this section, to the disposition of ex parte matters authorized by law, or to communications requested by the Commission concerning:

- (1) Its proprietary functions;
- (2) General health and safety problems and responsibilities of the Commission; or
- (3) The status of proceedings.

(e) In any adjudication for the determination of an application for initial licensing, other than a

contested proceeding, Commissioners, members of their immediate staffs and other AEC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions may consult the regulatory staff, and the regulatory staff may communicate with Commissioners, members of their immediate staffs and other AEC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions. Such communication or consultation in an adjudication for the determination of an application for initial licensing, other than a contested proceeding, shall also be permitted with the staff other than the regulatory staff upon the initiative of the Commissioners.

9. A statement of general policy is appended to 10 CFR Part 2 to read as follows:

APPENDIX A. STATEMENT OF GENERAL POLICY: CONDUCT OF PROCEEDINGS FOR THE ISSUANCE OF CONSTRUCTION PERMITS FOR PRODUCTION AND UTILIZATION FACILITIES FOR WHICH A HEARING IS REQUIRED UNDER SECTION 189 a. OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED.

On December 8, 1962, the Atomic Energy Commission published amendments of its Rules of Practice (10 CFR Part 2) to describe the functions and procedures of its atomic safety and licensing boards (27 F.R. 12184). Those amendments implemented Public Law

87-615 of the 87th Congress, effective August 29, 1962, which was designed to permit greater flexibility and to encourage informality in the conduct of AEC licensing proceedings. The statement of considerations which was published with the amendments to Part 2 included recommendations for the conduct of proceedings by atomic safety and licensing boards, in order to carry out the purpose that hearings in which there are no substantial contested issues among the parties should be conducted more informally than had theretofore been the practice. On November 25, 1963, the Commission issued Press Release F-240 which covered in greater detail the same general subject matter as the statement of considerations and also emphasized the importance which the Commission attached to implementing the informal procedures to the fullest extent practicable in uncontested cases. In the statement of considerations the Commission, recognizing the need for continuing review of its procedures, specifically pointed out that it intended to adopt from time to time any further amendments of its regulations which experience in the operation of atomic safety and licensing boards might indicate as being necessary or desirable.

As a part of that continuing review the Commission announced the appointment of a seven-member Regulatory Review Panel on January 25, 1965, to study (1) the programs and procedures for the licensing and regulation of reactors and (2) the decision-making process in the Commission's regulatory program.

Several of the Panel's recommendations, which were submitted on July 14, 1965, are implemented in the amendments to Part 2 which have been issued simultaneously herewith. As a result of those amendments, the statement of considerations and press release referred to above no longer accurately reflect in detail current Commission rules and policy.

The following Statement of General Policy explains in detail the procedures which the Atomic Energy Commission expects to be followed by atomic safety and licensing boards in the conduct of proceedings relating to the issuance of construction permits for nuclear power and test reactors and other production or utilization facilities for which a hearing is mandatory under section 189 a. of the Atomic Energy Act of 1954, as amended (the Act).^{*} The Statement reflects the Commission's intent that such proceedings be conducted informally and expeditiously and its concern that its procedures maintain sufficient flexibility to accommodate that objective.

Such proceedings are frequently uncontested in that the application for a construction permit is not opposed by an intervenor nor are there any controversies between the Commission's regulatory staff and the applicant concerning the issuance of the permit or the terms and conditions thereof. The provisions of sections I through V of the following Statement are, for the sake of convenience, set out in the framework of the uncontested proceeding. They are applicable also, however, to the contested proceeding except as the context would otherwise indicate, or except as indicated in section VI. Section VI sets out the procedures specifically applicable to the contested proceeding.

^{*}Except as the context may otherwise indicate, this Statement is also generally applicable to the conduct of proceedings for the issuance of operating licenses for such facilities, as well as to authorization proceedings conducted under Part 115, Procedures for Review of Certain Nuclear Reactors Exempted from Licensing Requirements, and to licensing proceedings of the type described in the Statement which may be conducted by a hearing examiner as the presiding officer.

Atomic safety and licensing boards are appointed from time to time by the Atomic Energy Commission to conduct hearings in licensing cases under the authority of section 191. of the Act. Section 191. authorizes the Commission to establish one or more atomic safety and licensing boards to conduct public hearings and to make intermediate or final decisions in administrative proceedings relating to granting, suspending, revoking or amending licenses or authorizations issued by the Commission. It requires that each board consist of two members who are technically qualified and one member who is qualified in the conduct of administrative proceedings. Members for each board may be appointed by the Commission from a panel selected from private life, the staff of the Commission or other federal agencies.

This statement is intended as a guide to the conduct of public hearings under the mandatory hearing requirements of the Act for the information of the public and assistance of members of boards and parties to licensing proceedings. It is not all inclusive. It is intended to explain and summarize certain requirements of governing statutes, the Commission's Rules of Practice, 10 CFR Part 2, and some applicable principles of law and good practice.

I. Preliminary Matters

- (a) A public hearing is announced by the issuance of a notice of hearing signed by the Commission's Secretary, stating the nature of the hearing, its time and place and the issues to be considered. When a hearing is to

be held before a board, the notice of hearing will ordinarily designate the chairman and the other members. The time and place of the prehearing conference will ordinarily be stated in the notice of hearing. The notice of hearing is published in the FEDERAL REGISTER at least 30 days prior to the date of hearing. In addition, a public announcement is issued by the Commission regarding the date and place of the hearing.

(b) In fixing the time and place of any postponed hearing or of the prehearing conference the boards will take into consideration the convenience of board members, the AEC staff and other parties to the extent practicable.

(c) The notice of hearing will, unless the staff opposes the application, include the findings which the Director of Regulation proposes to make, that is, the findings which are necessary under the Act and the Commission's regulations to support the granting of an application, and the form of provisional construction permit which he proposes to issue. The Director of Regulation will, of course, be free to propose different findings on the basis of new information brought out at the hearing.

(d) The notice of hearing will state that the board will determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory

staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the proposed provisional construction permit. The notice of hearing will also state that the board will not conduct a de novo evaluation of the application.

(e) Prior to a hearing, board members should review and become familiar with:

The record of any relevant prior proceedings in the case, including initial decisions and Commission orders. The Advisory Committee on Reactor Safeguards (ACRS) report, the staff safety analysis, the application and all other papers filed in the proceeding. The Commission's Rules of Practice, 10 CFR Part 2, and such other regulations or published statements of policy of the Commission as may be pertinent to the proceedings.

(f) At any time when a board is in existence but is not actually in session, the chairman has all the powers of the board to take action on procedural matters. The Chairman may have occasion, when the board is not in session, to dispose of preliminary procedural requests including, among other things, motions by parties relating to the conduct of the hearing. He may wish to discuss such requests with the other members of the board before ruling on them. No interlocutory appeal* may be taken by a party as a matter of right

* An interlocutory appeal means an appeal to the Commission from a ruling made by the board during the time between the issuance of a notice of hearing and the issuance of the initial decision.

from a ruling of the chairman or the board. The board should refer the challenged ruling to the Commission for a final decision if, in its judgment, a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense. This authority should be exercised sparingly, and only when deemed essential in fairness to the parties or the public.

II. Prehearing Conference

- (a) A prehearing conference, which is authorized in § 2.752 of 10 CFR Part 2, serves a vital function in defining substantive issues and in settling matters of procedure before the start of the hearing. A prehearing conference should be regarded as an informal meeting of the board with the parties to facilitate and expedite the conduct of the hearing where (a) the significant safety questions can be identified and discussed, (b) any matters in controversy between the parties can be clearly identified, and (c) any preliminary matters, such as identifying the witnesses to be presented by the parties or requested by the board; specifying the order and method of presentation of their testimony; scheduling the exchange of prepared testimony and documentary evidence; determining the contents of the decisional record and the method of designating exhibits; discussing procedures to be followed at the hearing; and arriving at such agreements as will aid in the conduct and expeditious disposition of the proceeding, can be disposed of. The Commission strongly

encourages their use and expects that a prehearing conference will ordinarily be held in each licensing proceeding before an atomic safety and licensing board. However, the prehearing conference is not a substitute for the hearing and matters discussed and agreements reached therein become a part of the decisional record only to the extent they are specifically incorporated in the decisional record by order or otherwise.

(b) The timing of the prehearing conference will depend on the nature of the case. When feasible, it will assist preparation for the hearing if the prehearing conference is held well in advance of the hearing. The date and place of the prehearing conference will usually be announced in the notice of hearing. Prehearing conferences are open to the public except under exceptional circumstances involving matters such as those referred to in 10 CFR § 2.790(a) and (b) ("company confidential" information; classified information; and certain privileged information not normally a part of the hearing record.)

(c) It is expected that a transcript of each prehearing conference will be prepared.

(d) Any agreements reached or decisions made at the conference will be incorporated promptly in the formal record of the hearing without prejudice to the rights of any subsequent intervenor. The board will be expected at

the opening of the hearing to state on the record that such a conference has been held and the time and place of the meeting and the persons who attended.

(e) The applicant, the regulatory staff and other parties will ordinarily provide each other and the board with copies of prepared testimony in advance of the hearing. A schedule may be established at the prehearing conference for exchange of prepared testimony. The applicant ordinarily files a summary of his application, including a summary description of the reactor and his evaluation of the considerations important to safety, and the staff files a safety analysis prior to the hearing. These may constitute the testimony of witnesses sworn at the hearing. All of these documents and prepared testimony are filed in the Commission's Public Document Room and are available for public inspection.

III. The Hearing

The following procedures should be observed in the conduct of public hearings:

(a) Preliminary

- (1) A verbatim transcript will be made of the hearing.
- (2) The chairman should convene the hearing by stating the title of the proceeding and describing its nature.
- (3) He should state the date, time and place at which the prehearing conference was held, and identify the persons participating in it. He should summarize the prehearing order, or, if there is

no written prehearing order, the results of the prehearing conference.

- (4) He should explain the procedures for the conduct of the hearing. He should request that counsel for the parties identify themselves on the record, and provide them with the opportunity to make opening statements of their respective positions.
- (5) He should describe, for the benefit of members of the public who may be present, the respective roles of the board, the ACRS and the staff, and the Commission procedures for review of the decision. He should also describe the continuing review and inspection surveillance conducted by the Commission after a construction permit or an operating license has been issued.

(b) Intervention and Limited Appearances

- (1) The chairman should call attention to the provisions of 10 CFR §§ 2.714 Intervention and 2.715 Participation by a person not a party (limited appearance). He should briefly explain these provisions and the rights of persons who may qualify as intervenors or as persons to be permitted to make limited appearances. He should call attention to the provision of 10 CFR § 2.714 (d) that the granting of a petition to intervene does not change or enlarge the issues specified in the notice of hearing unless expressly provided in the order allowing intervention.

- (2) The chairman should inquire of those in attendance whether there are any who wish to participate in the hearing by intervention or by limited appearance.
- (3) The board should rule on each request to participate in the hearing on either basis. The Commission's rules require that a petition for intervention be filed at least seven days prior to the start of the hearing. A board has general authority to extend the time for good cause with respect to allowing intervention.
- (4) As required by § 2.71⁴ of 10 CFR Part 2, a person who wishes to intervene must set forth, in a petition for leave to intervene, his interest in the proceeding, how the interest may be affected by Commission action, and his contentions. After consideration of any answers, the board will rule on the petition. In any event, the board should not permit enlarging of the issues, or receive evidence from an intervenor, with respect to matters beyond the jurisdiction of the Commission.
- (5) Those permitted to intervene become parties to the proceeding. Persons permitted to make limited appearances do not become parties, but should be permitted to make statements at such stage of the proceeding as the board may consider appropriate. A person making a limited appearance may only make an oral or written statement on the record, and

may not participate in the proceeding in any other way. The board may wish to limit the length of oral statements. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance for the purpose of making a statement.

(6) It is important that the board make clear to the members of the public seeking to participate the difference between intervention and limited appearance. An intervenor, unlike a person making a limited appearance, has all the rights of the applicant and the staff to participate fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. A person making a limited appearance may want not only to state his position, but to raise questions which he would like to have answered. This should be permitted to the extent the questions are within the scope of the proceeding as defined by the issues set out in the notice of hearing, the prehearing conference report, and any later orders. Usually such persons should be asked to make their statements and raise their questions early in the proceeding so that the board will have an opportunity to be sure that relevant and meritorious questions are properly dealt with during the course of the hearing.

(7) It is the Commission's view that the rules governing intervention and limited appearances are necessary in the interest of orderly proceedings. The Commission also believes that through these two methods of public participation all members of the public are assured of the right to participate by a method appropriate to their interest in the matter. This should be fully explained at the beginning of the hearing. In some cases the board may feel that it must deny an application to intervene but that it can still accommodate the desire of the person involved by allowing him to make a statement and raise questions under the limited appearance rule.

(8) Boards have considerable discretion as to the manner in which they accommodate their conduct of the hearing to local public interest and the desires of local citizens to be heard. Particularly in cases where it is evident that there is local concern as to the safety of the proposed plant, boards should so conduct the hearing as to give appropriate opportunity for local citizens to express their views, while at the same time protecting the legal interest of all parties and the public interest in an orderly and efficient licensing process. Boards should give full public recognition to the fact that utilization of such opportunity is one of the

important reasons why public hearings are held by the Commission and are held in the locality of interest.

(c) Opening Statements and Testimony

- (1) In order to facilitate public understanding of the proceeding it is anticipated that the applicant (who has the burden of proof in licensing proceedings), will, at an appropriate time early in the proceeding, make an oral statement describing in terms that will be readily understood by the public, the manner in which the safety of the public will be assured, by such provisions as siting, safety features of the reactor, including engineered safeguards, etc. It may be that the "summary description of the reactor and * * * evaluation of the considerations important to safety" referred to at paragraph (e) of section II above, will satisfactorily serve as the basis for such oral statement.
- (2) The staff will also, early in the proceeding but after the applicant has made the oral statement referred to in the preceding paragraph, make an oral statement describing the staff's evaluation of the application and the reasons for the conclusions reached by the staff, and summarizing the various steps taken by the staff and the ACRS in their review of the application.

- (3) The testimony of all witnesses will be given under oath. These witnesses may be collectively sworn at the opening of the hearing or if additional witnesses are called upon to testify at a subsequent stage they may be sworn at the time of their appearance.
- (4) There is ordinarily no need for oral recital of prepared testimony unless the board considers that some useful purpose will be served. Each witness presented by a party may be questioned by other parties and by the board. Unless testimony is being taken on a roundtable basis or there is some occasion for clarification of testimony as rendered, the board may wish to reserve its questions until the parties have completed questioning of the witnesses, since counsel for the respective parties will generally be prepared to develop the various lines of pertinent questions.
- (5) Opportunity should be assured, on an orderly basis, for each party to comment on statements made by other parties.
- (6) The proceedings should be conducted as expeditiously and informally as practicable, without impairing the development of a clear and adequate record. The order of presenting testimony may be freely varied in the conduct

of the hearing. The board may find it helpful to take expert testimony from witnesses on a roundtable basis after the receipt in evidence of prepared written testimony.

- (7) Objections may be made by counsel to any questions or any line of questioning, and should be ruled upon by the board. The board may admit the testimony, may sustain the objection, or may receive the testimony, reserving for later determination the question of admissibility. In passing on objections, the board, while not bound to view proffered testimony according to its admissibility under strict application of the rules of evidence in judicial proceedings, should exclude testimony that is clearly irrelevant to issues in the case, or that pertains to matters outside the jurisdiction of the board or the Atomic Energy Commission. Examples of matters which are considered irrelevant to the issues in the case or outside the jurisdiction of the board or the Atomic Energy Commission include the thermal effects (as opposed to the radiological effects) of the facility operation on the environment; the effect of the construction of the facility on the recreational, economic or political activities of the area near the site; and matters of aesthetics with respect to the proposed construction.

(d) Documentary Evidence

(1) Documentary evidence may be offered in evidence as provided in 10 CFR § 2.743.

(2) Such evidence offered during the course of the hearing should be described by counsel, and furnished to the reporter for marking. Documents offered for marking should be numbered in order of receipt. On identification of a document, it may be offered in evidence.

(e) Record

The transcript of testimony and the exhibits, together with all of the papers and requests filed in a proceeding, constitute the record for decision, except to the extent that official notice is taken pursuant to the following paragraph.

(f) Official Notice

(1) "Official notice" is a legal term of art. Generally speaking, a decision by a board must be made on the basis of evidence which is in the record of the proceeding. A board, however, is expected to use its expert knowledge and experience in evaluating and drawing conclusions from the evidence that is in the record. The board may also take account of and rely on certain facts which do not have to be "proved" since they are "officially noticed;" these facts do not have to be "proved" since they are matters of common knowledge.

(2) Pursuant to 10 CFR § 2.743(1) "official notice" may be taken of any fact of which judicial notice might be taken by the courts of the United States and of any technical or scientific fact within the knowledge of the Commission as an expert body, if (1) the fact is specified in the record or is brought to the attention of the parties before the final decision, and (2) every party adversely affected by the decision is afforded an opportunity to controvert the fact. (For example, a board might take "official notice" of the fact that high level wastes are encountered mainly as liquid residue from fuel reprocessing plants.) Matters which are "officially noticed" by a board furnish the same basis for findings of fact as matters which have been placed in evidence and proved in the usual sense.

(g) Participation by Board Members

(1) Boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS. The role of the board is to decide whether the application and the record of the proceeding contain sufficient information, and the review of

the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the provisional construction permit proposed by the Director of Regulation. The board will not conduct a de novo evaluation of the application, but rather, will test the adequacy of the staff's review upon which are based the findings and form of provisional construction permit which the Director of Regulation proposes to issue. If the board believes that additional information is required in the technical presentation in such a case, it would be expected to request the applicant or staff to supplement the presentation. If a recess should prove necessary to obtain such additional evidence, the recess should ordinarily be postponed until available evidence on all issues has been received.

(2) A question may be certified to the Commission for its determination when the question is beyond the board's authority, or when a major or novel question of policy, law or procedure is involved which cannot be resolved except by the Commission and when the prompt and final decision of the question is important for the protection of the public interest or to avoid undue delay or serious

prejudice to the interests of a party. For example, a board may find it appropriate to certify novel questions to the Commission as to the regulatory jurisdiction of the Commission or the right of persons to intervene.

(h) Close of Hearing

- (1) A board should give each party the opportunity to make a brief closing statement.
- (2) A schedule should be set by the board and recorded, either in the transcript or by written order, of the dates upon which the parties are directed by the board to file proposed findings of fact and conclusions of law. Proposed transcript corrections and proposed findings and conclusions are ordinarily filed in the first instance by the applicant, with opportunity for response by the regulatory staff and any intervenor. The atomic safety and licensing board need allow only a minimum time for the filing of proposed findings of fact and conclusions of law, briefs, and proposed form of order or decision, as permitted by § 2.754 of 10 CFR Part 2. It is expected that the proposed findings will ordinarily be extremely brief. Since there will be no significant issues in controversy, there will be no need for extensive findings.
- (3) The board should dispose of any additional procedural requests.
- (4) The chairman should formally close the hearing.

IV. Post-Hearing Proceedings, Including the Initial Decision

- (a) A board, acting through the chairman, should dispose of procedural requests made after the close of the hearing, including motions of the parties for correction of the transcript. Responses to requests and motions of the parties are made part of the record by issuance of written orders.
- (b) On receipt of proposed findings and conclusions from the parties, the board should prepare the initial decision. Under the Administrative Procedure Act and the Commission's regulations, the decision should include:
 - (1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact, law or discretion presented on the record;
 - (2) All facts officially noticed and relied on, if any, in making the decision;
 - (3) The appropriate ruling, order or denial of relief, with the effective date and time within which exceptions to the initial decision may be filed;
 - (4) The time when the decision becomes final.
- (c) A board will not ordinarily be expected to make formal recital of findings in greater detail than general or ultimate findings on the issues specified in the notice of hearing, namely, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's

regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the proposed provisional construction permit. The board will, of course, rule on findings of fact and conclusions of law proposed by the parties. To the extent that there may be disagreements between any of the parties on any particular matters, the board will be expected to make such detailed findings of fact as are appropriate to support the decisions reached on those matters. If the board finds affirmatively on the issues referred to above the Director of Regulation will, upon his making the proposed findings, issue the permit. If the board finds negatively on those issues, the Director of Regulation will deny the application.

- (d) A board will be expected to discuss concisely, in its decision, the principal safety matters involved in the issuance or denial of the proposed provisional construction permit. A board's initial decision should be prepared with the objective of familiarizing the public and the Commission with the reasons for the board's conclusions as to the sufficiency of the application and the record of the proceeding and the adequacy of the review of the application by the Commission's regulatory staff to support both the findings proposed by the Director of Regulation and the issuance of the provisional construction permit.

- (e) It is expected that ordinarily a board will render its initial decision in an uncontested case within 15 days after its receipt of proposed findings of fact and conclusions of law filed by the parties.
- (f) The initial decision will be transmitted to the Chief, Public Proceedings Branch, Office of the Secretary, for issuance.
- (g) After a board's initial decision is issued, the entire record of the hearing, including the board's initial decision, will be sent to the Commission for review. In the course of this review, the Commission may allow a board's decision to become the final decision of the Commission, may modify a board's decision, or may send the case back to the board for additional testimony on particular points or for further consideration of particular issues.
- (h) After completion of construction, the applicant must obtain an operating license; but a hearing on the operating license will not be held unless demanded by a party or ordered by the Commission. Where a hearing is held at the operating stage, it would be the practice of the Commission to attempt to use the same board which conducted the construction permit hearing.

V. General

- (a) Two members, being a majority of the board, constitute a quorum. The vote of a majority controls in any decision by a board, including rulings during the course

of a hearing as well as formal orders and the initial decision. A dissenting member is, of course, free to express his dissent and the reasons for it in a separate opinion for the record.

(b) The Commission may designate a technically qualified alternate for a board. The alternate will receive copies and become familiar with the application and other documents filed by the parties prior to the start of the hearing. It is expected that the alternate will be constituted by the board as a member of the board in situations where a technically qualified member of the board becomes unavailable for further service prior to the start of the hearing.

(c) 10 CFR §§ 2.719 and 2.780 specify the conditions on which there is permitted to be consultation between Commissioners and boards, on the one hand, and the staff, on the other hand, in initial licensing proceedings other than contested proceedings. 10 CFR § 2.719 also permits a board, in the same type of proceeding, to consult with members of the panel from which members of the boards are drawn. However, it is expected that such consultation by a board, when it occurs, will relate to specific technical matters rather than to matters of broad policy.

VI. Procedures Applicable to Contested Proceedings

(a) This section sets out certain differences in procedure from those described in sections I - V above, which are required by the fact that the proceeding is a "contested proceeding." Otherwise, the provisions of sections I through V of this Statement of General Policy also apply to a "contested proceeding."

(b) Issues to be Decided by Board

The board will, if the proceeding becomes a contested proceeding, make findings on the issues specified in the notice. In a contested proceeding, the board will determine:

(1) Whether in accordance with the provisions of 10 CFR § 50.35(a)

(a) The applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features and components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility, and (ii) taking into consideration

the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public.

- (2) Whether the applicant is technically qualified to design and construct the proposed facility;
- (3) Whether the applicant is financially qualified to design and construct the proposed facility;
- (4) Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

In considering those issues, however, the board will, as to matters not in controversy, be neither required nor expected to duplicate the review already performed by the Commission's regulatory staff and the ACRS; the board is authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS.

(c) Prehearing Conference

In contested proceedings, the use of the prehearing conference to identify what matters are in controversy and to clarify their relationship to the issues before the board is of primary importance.

(d) Participation by Board Members

In contested proceedings, the board will determine controverted matters as well as decide whether the findings required by the Act and the Commission's regulations should be made. Thus, in such proceedings, the board will determine the matters in controversy and may be called upon to make technical judgments of its own on those matters. As to matters which are not in controversy, boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS. Thus, the board need not evaluate those matters already evaluated by the staff which are not in controversy.

(e) Close of Hearing

In contested proceedings, proposed findings of fact and conclusions of law submitted by the parties may be more detailed than in uncontested proceedings. While brevity in such submissions is encouraged, the proposed findings and conclusions should be such as to reflect the position of the parties submitting them, and the technical and factual basis therefor.

(f) Post-Hearing Proceedings, Including the Initial Decision

(1) In contrast to an uncontested proceeding, the board will itself make the findings on the issues specified in § 2.104(b)(1) of Part 2 and the

reasons or basis for its findings. On the basis of those findings, the initial decision will state the board's determination whether or not a construction permit should be issued and, if so, in what form.

(2) In a contested case, it is expected that a board will ordinarily render its initial decision within 45 days after its receipt of proposed findings of fact and conclusions of law filed by the parties.

(g) The intra-agency consultation and communications referred to in Section V(c) are not permitted in contested proceedings.

10. The section heading of § 50.34 of 10 CFR Part 50 is amended to read as follows:

§ 50.34. Contents of applications; technical information safety analysis report.

11. Subparagraphs (1), (2) and (3) of § 50.35(a) of 10 CFR Part 50 are amended to read as follows:

§ 50.35 Issuance of provisional construction permits.

(a) When an applicant has not supplied initially all of the technical information required to complete the application and support the issuance of a construction permit which approves all proposed design features, the Commission may issue a provisional construction permit if the Commission finds that (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the

health and safety of the public; (2) such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report; (3) safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components.

12. Paragraphs 50.30(c), 50.35(c)(1), 50.36(a) and (c), 50.59(a), (b), (c) and (e) of 10 CFR Part 50 are amended by substituting the words "safety analysis report" for the words "hazards summary report" where they appear.
13. Paragraph 50.59(d) of 10 CFR Part 50 is amended by substituting the words "safety analysis report" for "hazards analysis" in the second sentence.
14. Section 55.20 of 10 CFR Part 55 is amended by substituting the words "safety analysis report" for "hazards summary report" in the second sentence.
15. The section heading of § 115.23 of 10 CFR Part 115 is amended to read as follows:

§ 115.23 Contents of applications; technical information safety analysis report.

16. Subparagraphs (1), (2) and (3) of § 115.24(a) of 10 CFR Part 115 are amended to read as follows:

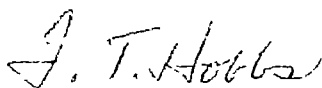
§ 115.24 Issuance of provisional construction authorizations.

(a) When an applicant has not supplied initially all of the technical information required to complete the application and support the issuance of a construction authorization which approves all proposed design features, the Commission may issue a provisional construction authorization if the Commission finds that (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public; (2) such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report; (3) safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

17. Paragraphs 115.20(c), 115.24(c)(1), 115.25(a) and (c), 115.45(a), (b) and (c) and (e) of 10 CFR Part 115 are amended by substituting the words "safety analysis report" for the words "hazards summary report" where they appear.

18. Paragraph 115.47(d) of 10 CFR Part 115 is amended by substituting the words "safety analysis report" for "hazards analysis" in the second sentence.

FOR THE ATOMIC ENERGY COMMISSION



F. T. Hobbs
Acting Secretary

Dated at Germantown, Maryland,
this 23rd day of September, 1966.

DR-535



TECHNICAL MANAGEMENT, INC.
502 FIRST NATIONAL BANK BUILDING
LINCOLN, NEBRASKA 68508
TELEPHONE 432-8831

DOCKET NUMBER
PROPOSED RULE **PR-2**
Statement of Gen. Policy

February 2, 1966

Mr. Harold L. Price
Director of Regulation
U. S. Atomic Energy Commission
Washington, D.C.

Dear Harold:

I am slowly approaching the end of the homework necessary to review the revisions issued by the Commission. As near as I can tell, it adequately meets the weight and ruler test for being successful.

Close correspondence with the recommendations of the Review Panel makes it easy for me to endorse the approach used in the preparation of the revision. I do have a couple of comments which may be of some value.

The proposed design criteria for construction permits appear to contain some elements which could be logically deferred to the operating permit stage. Obviously the test of any potential burden to the applicant or staff rests with the interpretation of the third paragraph in the introduction. If the data and analysis required to meet the test of sufficiency to give assurance that the design can reasonably be expected to fulfill the criteria is of so much detail that it represents a final design, then we have gone too far. I appreciate the intent of the staff is not to require this kind of detail, and therefore have the feeling it would be potentially beneficial to attempt to clarify this question of sufficiency. As I recall, our earlier review of these criteria differentiated between those which had to be clearly defined at the construction permit stage, as opposed to those which had to be proved prior to the operating permit.

Criterion 15 introduces the concept of safety limits which may or may not be properly understood in relationship to operating limits or actual licensing limits. I am not particularly concerned with the applicant's interpretation of this term since he will soon receive an education from the staff. However, this document has some potential educational value to the public or potential intervenor, and therefore places some premium on drafting the text in such a way that this educational objective can be met. Since this example of interpretation by the uninitiated occurs in other places in the text, is it possible to develop an explanation of the terms used? My concern is that any explanation might be interpreted by those within the industry as further restrictions. For this reason my suggestion may not be feasible.

DR-535

Rec'd Off. Dir. of Reg.
Date 2-2-66

Mr. Harold L. Price
February 2, 1966

DR-535

Regardless of how many times I read these regulations, I seem to glean something new from each exposure. Additionally, I seem to be able to read the same sentence for several years and not see a potential problem the first half dozen times. It is this experience that gives me even greater appreciation for the difficulty you and your staff must have in preparing these documents. The case in point is the second issue which must be decided by the Boards at the construction permit stage. The determination must be made as to whether the applicant is technically qualified to design and construct the proposed facility. Where the applicant is an electric utility, it is probably likely that they do not have the qualifications to design and construct the facility, but must rely upon manufacturers or A and E organizations. Again the question of interpretation enters in and the history of past decisions may be relied upon, but it does appear to be a loophole which may be advantageous to a future intervenor.

My final comments is connected with the appointment of an alternate technical member to any hearing board. As I understand the published rules, this individual would not be utilized after the hearing process was initiated. It is my opinion that he should be used after initiation of the hearing process in the event of disability of one of the technical board members. I appreciate that the likelihood of such a disability is small, particularly if we have been successful in shortening the hearing process. Nevertheless, the penalties of repeating a hearing are great. I would therefore suggest that the regulations provide that in the event of a disability (as opposed to a schedule conflict) the hearing should be completed by the remaining members or that the alternate member be seated without interruption. Under the latter circumstances, the newly seated member would have the opportunity to exert his views on issues previously raised, but upon which he did not have the opportunity to present questions. With this capability, his professional ability would be protected.

The above comments are very insignificant when evaluated against the tremendous success you and your staff have achieved in keeping the rules and regulations up-to-date with an ever-changing industry.

Sincerely,



Emerson Jones

EJ:lp

DR-535

DOCKET NUMBER

PROPOSED RULE

PR-2

DR-540

ABEL WOLMAN

THE JOHNS HOPKINS UNIVERSITY
BALTIMORE, MARYLAND 21218

Statement of General Policy

513 Ames Hall

February 3, 1966

Mr. Harold L. Price
Director of Regulation
U. S. Atomic Energy Commission
Washington, D. C. 20545

Dear Harold:

While I have not been completely swamped by the papers accompanying your letters of January 6 and 18, I have the feeling of having worked my way out of recent major snow drifts.

I am always amazed by the prodigious amount of work your office has done on the subject of licensing procedures. I subscribe to the validity and wisdom of what I have read in the documents.

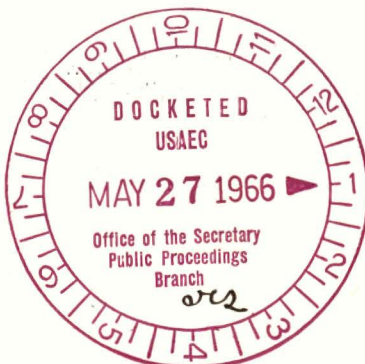
One item, however, does puzzle me. It appears in the document accompanying your letter of January 6, entitled "Statement of General Policy: Conduct of Proceedings by Atomic Safety and Licensing Boards." At the top of page 16 you list "irrelevant" matters "outside the jurisdiction of the Board or the Atomic Energy Commission." I fail to see how the matters so listed can be so categorized or so lightly disposed of. They happen to be issues which so often dominate the case and it is difficult to see how they become "irrelevant."

With best regards.

Very truly yours,

Abel Wolman

Abel Wolman



DR-540

Rec'd Off. Dir. of Reg.
Date

UNITED STATES GOVERNMENT

Memorandum

DOCKET NUMBER PR-2
PROPOSED RULE
Statement of General Policy

TO : Harold L. Price
Director of Regulation

FROM : Samuel W. Jensch *Jensch*
Samuel W. Jensch
Chief Hearing Examiner
Office of Hearing Examiners

SUBJECT: PROPOSED REVISION OF PART II

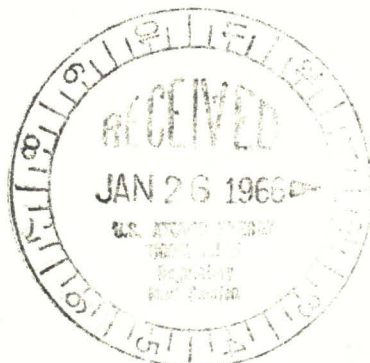
DATE: January 26, 1966

In reference to your inquiry dated January 6, 1966 for comments on the proposed revision to Part II, rules of procedure for hearings, receipt is acknowledged of the form of the proposals which are published in the Federal Register.

I believe the proposals for revisions of the Part II Rules are a substantial improvement over the suggestions of the Mitchell Panel report. This is not to say that some phrases in the proposals could not lead to some variations in interpretations, but the context of the proposals should provide the necessary clarification. In my opinion such proposals are feasible, fair, and entirely consistent with the Administrative Procedure Act. Most importantly, I believe the Part II Rule proposals considered in connection with the Statement of Considerations provide the necessary guidelines and standards for licensing proceedings that have been needed, and finally, that such proposals will materially aid in expediting the consideration of the cases.

I would suggest one specific addition: that provision be made for service by the Secretary of the Commission upon all parties and limited appearance participants of the Notice of Proposed Issuance of a Facility License so that fair opportunity will be given to those who would care to similarly participate, or to request a hearing in later proceedings pertaining to a particular reactor.

cc: Joseph F. Hennessey, General Counsel



Rec'd Off. Dir. of Reg.
Date 1-26-66
Time 3:00
Beth. ✓



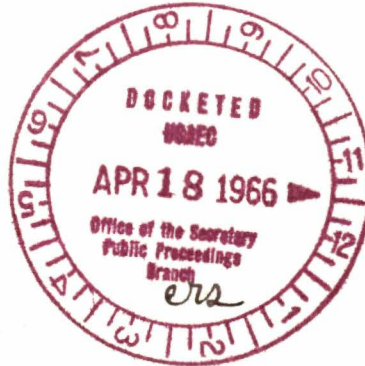
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April 13, 1966

Secretary
U.S. Atomic Energy Commission
Washington, D.C. 20545



Dear Sir:

The Forum's ad hoc Committee on Reactor Regulation has reviewed the proposed amendments to the AEC regulation, including the Statement of General Policy, published in the Federal Register on January 21, 1966. The proposed amendments and the proposed Statement of General Policy are designed to implement some of the recommendations of the Regulatory Review Panel. The ad hoc Committee has not had an opportunity to discuss in detail all of the proposed regulations and the proposed Statement of General Policy. Several major issues, however, were discussed and the Committee's comments on these issues are set forth below.

1. Licensing Board's Determinations in Uncontested Cases

A proposed amendment to Part 2 would seem to limit the licensing board's responsibility in uncontested cases to a determination of the "sufficiency" of the information, and the "adequacy" of the regulatory staff's review, to support the issuance of a provisional construction permit proposed by the Director of Regulation. Considering the quality and adequacy of the two safety reviews undertaken by the AEC regulatory staff and the Advisory Committee on Reactor Safeguards, the Committee concurs in the intention of the Commission to limit the technical review responsibilities of the atomic safety and licensing boards in uncontested cases. In this connection the statement that boards may "rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS" should be helpful.

2. Issuance of Provisional Construction Permits and Authorizations

The proposed changes in Parts 50 and 115 are intended to make clear that certain technical or design information need not be submitted



Acknowledged 4/18/66, ore

until the review stage preceding the issuance of an operating license. This clarification, which reflects current regulatory practice, is desirable. The clarification, however, does not offer any guidance as to the kind and depth of information "which can reasonably be left for later consideration." Such guidance may be difficult to develop. Nevertheless, we recommend the initiation by the Commission of efforts to develop and publish such guides which might be in the form of examples. Such an activity might reasonably follow the Commission's current effort to develop construction permit criteria.

In subparagraph (3) of the proposed clarifications in sections 50.35 and 115.24 we suggest substituting "identified" for "proposed." Implicit in the term "proposed" is the concept that the proposer, i.e. the applicant, will undertake the research and development. There may be instances where the research and development program will be undertaken by other persons.

3. Pre-hearing Conferences

The committee believes that utilization of the pre-hearing conference to identify and discuss the significant safety issues and to define the matters in controversy, if any, will contribute to a better understanding of the issues and the review process and thereby facilitate orderly public review procedures. Licensing board members should be cautioned, however, not to permit the pre-hearing conference to substitute for the public hearing.

The proposed instruction on pages 14 and 15 of the Statement of Policy offers no guidance as to the circumstances under which prior public notice would be given of pre-hearing conferences. We recommend that pre-hearing conferences be scheduled and announced when the Notice of Hearing is issued.

In the penultimate sentence on page 15, we suggest the substitution of "may constitute" for "are adopted by". This would eliminate any inference that testimony should encompass more than the application and the summary of the application.

4. Ex-Parte Rules

The proposed rules would permit presiding officers (hearing examiners or atomic safety and licensing boards) in initial licensing proceedings, to consult with members of the panel from which the licensing boards are selected, without notice and opportunity for all parties to participate in the discussions. Similarly, but only in uncontested cases, such ex-parte consultations would be authorized with members of the staff, including the regulatory staff. The proposed change would also relax the present restrictions, in proceedings involving initial licensing, on communications between the Commissioners and their immediate staff and the regulatory staff.

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Insofar as the proposed rules would relax the present rules applicable to presiding officers, the proposals go beyond the recommendations of the Regulatory Review Panel. The committee believes that frequent opportunities should be afforded the members of the licensing board panel to discuss general policy questions and issues. Such discussions would tend to harmonize the philosophy of and the techniques employed by, the ad hoc licensing boards. However, we believe it would be inappropriate for licensing board members to seek ex-parte technical advice concerning matters in issue in specific proceedings from any persons, including members of the licensing board panel, who have not previously participated in a review of the entire application. For similar reasons, ex-parte discussions with members of the staff, other than the regulatory staff, should be precluded.

In the interest of facilitating increased understanding by licensing board members and Commissioners of the technical issues involved and the Commission's review processes, we favor the proposals which would permit ex-parte discussions by the licensing boards or the Commissioners with the regulatory staff in uncontested proceedings.

We understand that the Commission has under consideration the appointment of a permanent chairman of the atomic safety and licensing boards. The establishment of such a position would appear to be desirable and, if it is established, provision should be made to permit ex-parte discussions between licensing board members and such a chairman in uncontested cases.

The committee has a number of reservations regarding the desirability of any modification of the present ex-parte rules in contested proceedings. We note that the Commission has recently appointed a three-member panel to make an in-depth study of contested cases. We recommend that the Commission ask this panel to include on its agenda the desirability of changes in the present ex-parte rules applicable to contested proceedings.

5. Status of Proposed Regulations

The press release which announced the proposed regulations stated that the Commission expects to use the new proposed Statement of General Policy as interim guidance to the extent that the provisions of the Statement are not inconsistent with existing rules and regulations. This could cause some confusion. The proposed amendments, other than the ex-parte proposals, generally would improve the present

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regulations and therefore should be put into effect in the near future. After a reasonable period of time it would be appropriate to again review the instructions and their application by the atomic safety and licensing boards to determine their efficacy and their consistency with the public interest.

Very truly yours,

A handwritten signature in dark ink, reading "James H. Campbell". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

JHC:gc1

James H. Campbell
Chairman
AIF Ad Hoc Committee
on Reactor Regulation

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

COMMITTEE ON ATOMIC ENERGY

RICHARD D. KAHN, ESQ.
CHAIRMAN
320 PARK AVENUE
NEW YORK, N. Y. 10022
PLAZA 2-6400

DOCKET NUMBER
PROPOSED RULE **PR-2**

1. Statement of Gen. Policy
2. Intra-Agency Communications

March 29, 1966

Secretary
United States Atomic Energy Commission
Washington, D. C. 20545

Comments on Proposed Amendments to
Rules of Practice and Policy State-
ment on Reactor Licensing Procedures



Dear Sir:

The Committee on Atomic Energy of the Association of the Bar of the City of New York has reviewed the proposed amendments to the Atomic Energy Commission's Rules of Practice, together with the Policy Statement on reactor licensing procedures, published in the Federal Register on January 21, 1966.

We believe that the proposed amendments represent a salutary step in adapting the Commission's regulatory procedures to the developing pace of the atomic energy industry. The Committee would like to comment specifically on only two points:

1. Role of Licensing Board in Uncontested Cases

Under the proposed revisions to the Rules of Practice the "hearing" conducted by an Atomic Safety and Licensing Board in an uncontested case would be directed to a determination of the "sufficiency" of the information in the record, and of the "adequacy" of the review conducted by the Commission's Regulatory Staff. This should result in a significant reduction in the scope of the Licensing Board's activity. It represents a shift from a de novo determination of the facts by the Board to an appellate type review.

We share the concern which has been expressed regarding the multiplicity of individual safety reviews by the Applicant, by the Regulatory Staff, by the ACRS, and by the Licensing Boards. We also recognize the desirability of flexible experimentation in the use of administrative procedures in the AEC licensing process. The Committee believes, however, that the proposed revisions in the Rules of Practice raise the broader question as to the role of the Licensing Board in the overall regulatory process, and the Committee questions whether hearings in uncontested cases by the Licensing Board are significant or useful. After some experience has been obtained under the proposed rules, it may be desirable to consider the possible elimination of Licensing Board hearings in uncontested cases.

2. Ex Parte Communications

The Committee endorses the proposed liberalization of the ex parte communication rules in uncontested cases. We agree that in the uncontested cases ex parte communications should be permitted between the members of a Licensing Board conducting a particular hearing and the Panel from which the Commission appoints Licensing Boards, as well as between the members of the Licensing Board and the Commission's Regulatory Staff. In addition, we endorse the proposal to permit ex parte communications in uncontested cases between the Commissioners and the Regulatory Staff.

The Committee does not believe, however, that the restrictions on ex parte communications should be removed in contested cases. We disapprove of the proposal that in a contested case the members of a particular Licensing Board should be free to consult the members of the Panel from which the Commission appoints Licensing Boards. We also question the desirability of the proposal to permit consultation at the initiative of the Commissioners between the Commissioners and their advisers on the one hand, and members of the Regulatory Staff who have not appeared in the public hearing. The Committee believes that in the contested case the protection of the ex parte rules should be maintained.

We also note that the proposed Regulation § 2.719(d) provides that the substance of an ex parte communication shall be specified in the record of the proceeding where a decision "is stated to rest in whole or in part

on fact or opinion" obtained as a result of an ex parte communication. We believe that the test for disclosure should not depend on whether the decision "is stated to rest" on the ex parte communication, but rather on whether the decision was, in fact, substantially influenced by the ex parte communication.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard D. Kahn". The signature is written in a cursive, slightly slanted style.

Chairman



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PUBLIC HEALTH SERVICE

WASHINGTON 25, D. C.

DOCKET NUMBER
PROPOSED RULE **PR-2**
Statement of Gen Policy

BUREAU OF STATE SERVICES

Refer to: DRH:TOB

MAR 25 1966

Mr. Woodford B. McCool
Secretary
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dear Mr. McCool:

The Division of Radiological Health of the Public Health Service has reviewed the proposed amendments to 10CFR2, "Facility Licensing Procedure," as published in the Federal Register on January 21, 1966.

In general, the Division feels that the proposed amendments will be beneficial to all parties involved in the licensing of nuclear facilities. Appendix A to Part 2 provides for a prehearing conference to facilitate and expedite the hearing process. Only those groups which are parties to the hearing are required to be notified of this prehearing conference. Some State agencies may wish to make only limited appearances at the hearing and they might not necessarily learn of the prehearing conference. Since significant safety questions may be identified and discussed under the expanded rules for the prehearing conference, it is suggested the appropriate State health agencies be notified of the time and place of the prehearing conference as a means of keeping them fully informed.

Sincerely yours,

Donald R. Chadwick

Donald R. Chadwick, M.D.
Chief, Division of Radiological Health



Figure 1. The effect of the concentration of the *Agaricus bisporus* spores on the growth of *Agaricus bisporus* on the substrate. The concentration of the spores was 10⁴ spores/g (○), 10⁵ spores/g (□), 10⁶ spores/g (△), 10⁷ spores/g (◇), 10⁸ spores/g (×), 10⁹ spores/g (●), 10¹⁰ spores/g (◊), 10¹¹ spores/g (◐), 10¹² spores/g (◑), 10¹³ spores/g (◒), 10¹⁴ spores/g (◓), 10¹⁵ spores/g (◔), 10¹⁶ spores/g (◕), 10¹⁷ spores/g (◖), 10¹⁸ spores/g (◗), 10¹⁹ spores/g (◘), 10²⁰ spores/g (◙), 10²¹ spores/g (◚), 10²² spores/g (◛), 10²³ spores/g (◜), 10²⁴ spores/g (◝), 10²⁵ spores/g (◞), 10²⁶ spores/g (◟), 10²⁷ spores/g (◠), 10²⁸ spores/g (◡), 10²⁹ spores/g (◢), 10³⁰ spores/g (◣), 10³¹ spores/g (◤), 10³² spores/g (◥), 10³³ spores/g (◦), 10³⁴ spores/g (◧), 10³⁵ spores/g (◨), 10³⁶ spores/g (◩), 10³⁷ spores/g (◪), 10³⁸ spores/g (◫), 10³⁹ spores/g (◬), 10⁴⁰ spores/g (◭), 10⁴¹ spores/g (◮), 10⁴² spores/g (◯), 10⁴³ spores/g (◰), 10⁴⁴ spores/g (◱), 10⁴⁵ spores/g (◲), 10⁴⁶ spores/g (◳), 10⁴⁷ spores/g (◴), 10⁴⁸ spores/g (◵), 10⁴⁹ spores/g (◶), 10⁵⁰ spores/g (◷), 10⁵¹ spores/g (◸), 10⁵² spores/g (◹), 10⁵³ spores/g (◺), 10⁵⁴ spores/g (◻), 10⁵⁵ spores/g (◼), 10⁵⁶ spores/g (◽), 10⁵⁷ spores/g (◾), 10⁵⁸ spores/g (◿), 10⁵⁹ spores/g (◠), 10⁶⁰ spores/g (◡), 10⁶¹ spores/g (◢), 10⁶² spores/g (◣), 10⁶³ spores/g (◤), 10⁶⁴ spores/g (◥), 10⁶⁵ spores/g (◦), 10⁶⁶ spores/g (◧), 10⁶⁷ spores/g (◨), 10⁶⁸ spores/g (◩), 10⁶⁹ spores/g (◪), 10⁷⁰ spores/g (◫), 10⁷¹ spores/g (◬), 10⁷² spores/g (◭), 10⁷³ spores/g (◮), 10⁷⁴ spores/g (◯), 10⁷⁵ spores/g (◰), 10⁷⁶ spores/g (◱), 10⁷⁷ spores/g (◲), 10⁷⁸ spores/g (◳), 10⁷⁹ spores/g (◴), 10⁸⁰ spores/g (◵), 10⁸¹ spores/g (◶), 10⁸² spores/g (◷), 10⁸³ spores/g (◸), 10⁸⁴ spores/g (◹), 10⁸⁵ spores/g (◺), 10⁸⁶ spores/g (◻), 10⁸⁷ spores/g (◼), 10⁸⁸ spores/g (◽), 10⁸⁹ spores/g (◾), 10⁹⁰ spores/g (◿), 10⁹¹ spores/g (◠), 10⁹² spores/g (◡), 10⁹³ spores/g (◢), 10⁹⁴ spores/g (◣), 10⁹⁵ spores/g (◤), 10⁹⁶ spores/g (◥), 10⁹⁷ spores/g (◦), 10⁹⁸ spores/g (◧), 10⁹⁹ spores/g (◨), 10¹⁰⁰ spores/g (◩), 10¹⁰¹ spores/g (◪), 10¹⁰² spores/g (◫), 10¹⁰³ spores/g (◬), 10¹⁰⁴ spores/g (◭), 10¹⁰⁵ spores/g (◮), 10¹⁰⁶ spores/g (◯), 10¹⁰⁷ spores/g (◰), 10¹⁰⁸ spores/g (◱), 10¹⁰⁹ spores/g (◲), 10¹¹⁰ spores/g (◳), 10¹¹¹ spores/g (◴), 10¹¹² spores/g (◵), 10¹¹³ spores/g (◶), 10¹¹⁴ spores/g (◷), 10¹¹⁵ spores/g (◸), 10¹¹⁶ spores/g (◹), 10¹¹⁷ spores/g (◺), 10¹¹⁸ spores/g (◻), 10¹¹⁹ spores/g (◼), 10¹²⁰ spores/g (◽), 10¹²¹ spores/g (◾), 10¹²² spores/g (◿), 10¹²³ spores/g (◠), 10¹²⁴ spores/g (◡), 10¹²⁵ spores/g (◢), 10¹²⁶ spores/g (◣), 10¹²⁷ spores/g (◤), 10¹²⁸ spores/g (◥), 10¹²⁹ spores/g (◦), 10¹³⁰ spores/g (◧), 10¹³¹ spores/g (◨), 10¹³² spores/g (◩), 10¹³³ spores/g (◪), 10¹³⁴ spores/g (◫), 10¹³⁵ spores/g (◬), 10¹³⁶ spores/g (◭), 10¹³⁷ spores/g (◮), 10¹³⁸ spores/g (◯), 10¹³⁹ spores/g (◰), 10¹⁴⁰ spores/g (◱), 10¹⁴¹ spores/g (◲), 10¹⁴² spores/g (◳), 10¹⁴³ spores/g (◴), 10¹⁴⁴ spores/g (◵), 10¹⁴⁵ spores/g (◶), 10¹⁴⁶ spores/g (◷), 10¹⁴⁷ spores/g (◸), 10¹⁴⁸ spores/g (◹), 10¹⁴⁹ spores/g (◺), 10¹⁵⁰ spores/g (◻), 10¹⁵¹ spores/g (◼), 10¹⁵² spores/g (◽), 10¹⁵³ spores/g (◾), 10¹⁵⁴ spores/g (◿), 10¹⁵⁵ spores/g (◠), 10¹⁵⁶ spores/g (◡), 10¹⁵⁷ spores/g (◢), 10¹⁵⁸ spores/g (◣), 10¹⁵⁹ spores/g (◤), 10¹⁶⁰ spores/g (◥), 10¹⁶¹ spores/g (◦), 10¹⁶² spores/g (◧), 10¹⁶³ spores/g (◨), 10¹⁶⁴ spores/g (◩), 10¹⁶⁵ spores/g (◪), 10¹⁶⁶ spores/g (◫), 10¹⁶⁷ spores/g (◬), 10¹⁶⁸ spores/g (◭), 10¹⁶⁹ spores/g (◮), 10¹⁷⁰ spores/g (◯), 10¹⁷¹ spores/g (◰), 10¹⁷² spores/g (◱), 10¹⁷³ spores/g (◲), 10¹⁷⁴ spores/g (◳), 10¹⁷⁵ spores/g (◴), 10¹⁷⁶ spores/g (◵), 10¹⁷⁷ spores/g (◶), 10¹⁷⁸ spores/g (◷), 10¹⁷⁹ spores/g (◸), 10¹⁸⁰ spores/g (◹), 10¹⁸¹ spores/g (◺), 10¹⁸² spores/g (◻), 10¹⁸³ spores/g (◼), 10¹⁸⁴ spores/g (◽), 10¹⁸⁵ spores/g (◾), 10¹⁸⁶ spores/g (◿), 10¹⁸⁷ spores/g (◠), 10¹⁸⁸ spores/g (◡), 10¹⁸⁹ spores/g (◢), 10¹⁹⁰ spores/g (◣), 10¹⁹¹ spores/g (◤), 10¹⁹² spores/g (◥), 10¹⁹³ spores/g (◦), 10¹⁹⁴ spores/g (◧), 10¹⁹⁵ spores/g (◨), 10¹⁹⁶ spores/g (◩), 10¹⁹⁷ spores/g (◪), 10¹⁹⁸ spores/g (◫), 10¹⁹⁹ spores/g (◬), 10²⁰⁰ spores/g (◭), 10²⁰¹ spores/g (◮), 10²⁰² spores/g (◯), 10²⁰³ spores/g (◰), 10²⁰⁴ spores/g (◱), 10²⁰⁵ spores/g (◲), 10²⁰⁶ spores/g (◳), 10²⁰⁷ spores/g (◴), 10²⁰⁸ spores/g (◵), 10²⁰⁹ spores/g (◶), 10²¹⁰ spores/g (◷), 10²¹¹ spores/g (◸), 10²¹² spores/g (◹), 10²¹³ spores/g (◺), 10²¹⁴ spores/g (◻), 10²¹⁵ spores/g (◼), 10²¹⁶ spores/g (◽), 10²¹⁷ spores/g (◾), 10²¹⁸ spores/g (◿), 10²¹⁹ spores/g (◠), 10²²⁰ spores/g (◡), 10²²¹ spores/g (◢), 10²²



Acknowledged 3/29/66, crs



Guidance for AS & L Boards

DOCKET NUMBER **PR-2, 50, 55 & 115**
PROPOSED RULE

NATIONAL COAL ASSOCIATION

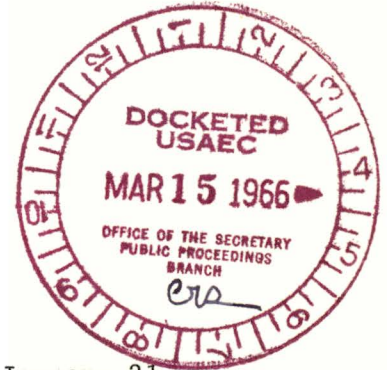
Coal Building | 1130 Seventeenth Street, Northwest | Washington, D. C. 20036 | NAional 8-4322

March 14, 1966

BRICE O'BRIEN
General Counsel

The Secretary
U. S. Atomic Energy Commission
Washington, D. C. 20545

Dear Sir:



Beginning at page 832 in the Federal Register of January 21, 1966, there were published proposed amendments to AEC's Rules of Practice, 10 CFR Part 2, with notice that interested persons could submit written comments or suggestions within a period of 60 days. These comments and suggestions are submitted in response to that notice.

I. "Irrelevant" issues for atomic safety and licensing boards

It is proposed to amend 2.764 of 10 CFR Part 2 by appending a statement of general policy reading, in part, as follows:

"In passing on objections, the board [atomic safety and licensing board], while not bound to view proffered testimony according to its admissibility under strict application of the rules of evidence in judicial proceedings, should exclude testimony that is clearly irrelevant to issues in the case, or that pertains to matters outside the jurisdiction of the board or the Atomic Energy Commission. Examples of matters which are considered irrelevant to the issues in the case or outside the jurisdiction of the board or the Atomic Energy Commission include the thermal effects (as opposed to the radiological effects) of the facility operation on the environment; the effect of the construction of the facility on the recreational, economic or political activities of the area near the site; and matters of aesthetics with respect to the proposed construction."

While the authority for the establishment of atomic safety and licensing boards is set forth in section 191 of the Atomic Energy Act, the duties of the Commission (delegated in part to the boards)

The Secretary
U. S. Atomic Energy Commission

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March 14, 1966

with respect to issuing a license are set forth primarily in sections 3 and 182. In section 3, the Commission is directed to provide a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent "consistent with the common defense and security and with the health and safety of the public." (emphasis added)

In section 182 of the Act, the Commission is authorized to require information deemed necessary "in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public." (emphasis added)

In order for the Commission to carry out its statutory duty of deciding whether a given plant provides "adequate protection" for the health and safety of the public, more than a scientific judgment must be reached--there must also be a social judgment, to decide whether the benefits are worth the risks. This proposition is so widely accepted that elaboration is not required.

There are risks in building an atomic plant -- risks to the health and safety of the public. Simple and clear indications of the enormity of the risk are provided by WASH-740, and by the fact that utility representatives testified in 1965 before the Joint Committee on Atomic Energy that they would not build plants if their financial protection were limited to \$560 million per plant.

There may be, and perhaps there are, benefits to the public to be derived from construction of a specified atomic plant. In order to determine whether the public health and safety is adequately protected, there must be a determination that the benefits will balance, or more than balance, the risks. This determination cannot be made without consideration of factors affecting the possible benefits. Such factors necessarily include the fact that thermal pollution from an atomic plant is approximately 60 per cent more severe than from a fossil fuel plant producing the same amount of electricity. They also include, of necessity, comparative costs of alternate sources of energy, effect of the construction of the facility on the recreational, economic or political activities of the area near the site; and matters of aesthetics with respect to the proposed construction.

In summary, there can be no evaluation of the proper amount of risk to which the public should be subjected, if evidence on the benefits or lack of benefits is excluded from the evaluation.

II. Scope of review by boards

It is further set forth, in the proposed statement of general policy, that:

NATIONAL COAL ASSOCIATION

The Secretary
U. S. Atomic Energy Commission

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March 14, 1966

"Boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS." (emphasis added)

As proposed, the policy language appears designed to convert the atomic safety and licensing boards into "rubber stamps." The public deserves better treatment.

Under present law, the Commission's Advisory Committee on Reactor Safeguards reviews each application for a license to build and operate an atomic power plant, including applications which involve proposed plants of the same basic type and design. It is no secret that the atomic power industry, with the apparent acquiescence of the Commission, hopes to eliminate the ACRS review, now required by law, and to relegate the ACRS to a role involving only reviews of novel types of atomic power plants. One source of independent judgment concerning the safety of each proposed atomic plant thus would disappear.

Any "rubber stamp" routine in the absence of controversy is unwarranted in the field of atomic power. The technical competence to register objections, and raise controversies, with respect to specific scientific and engineering details of proposed plants is peculiarly within the scope of those who work for the Atomic Energy Commission and the atomic power industry. The members of the public should not be deprived of the protection afforded them by the freedom of the atomic safety and licensing boards to make independent inquiries.

If the boards are not to be permitted, under Commission policy, to make the inquiries they believe necessary to protect public health and safety adequately in each license application proceeding, it would be far wiser to eliminate them entirely rather than make a mockery of a system intended to provide a source of independent judgment of the risks involved in the construction and operation of proposed atomic power plants. As such plants become more numerous, greater concern for the health and safety of the public, discharged in part by the atomic safety and licensing boards, is mandatory.

Respectfully submitted,

NATIONAL COAL ASSOCIATION

By:

Brice O'Brien

Brice O'Brien
General Counsel

BO' B:bhs