

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Gregory B. Jaczko
SUBJECT: SECY-10-0082 – MANDATORY HEARING PROCESS
FOR COMBINED LICENSE APPLICATION
PROCEEDINGS UNDER 10 C.F.R. PART 52

Approved X (in part) Disapproved X (in part) Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE
8/20/10

DATE

Entered on "STARS" Yes x No _____

SECY-10- 0082 Mandatory Hearing Process for Combined License Application Proceedings under 10 C.F.R. Part 52

I approve in part and disapprove in part the staff's recommendations for the conduct of mandatory hearings for combined license applications. Fundamentally, the structure of these hearings should be guided by their underlying purpose – to enhance transparency and public confidence in the agency's licensing processes. This purpose is best served by legislative style, informational hearings focused on those areas of the staff's review of interest to the Commission. These hearings will give the public valuable insight into the Commission's oversight role in the licensing process provided they are understandable, straightforward and focused. They need not, and should not, induce the Commission to undertake a full-scale review of every aspect of the staff's review of these complex applications, assume responsibility for making the technical findings normally delegated to the staff, or develop detailed adjudicatory decisions. I decline to adopt these recommendations because they impose selective, unnecessary and overly burdensome requirements on the Commission's oversight of the staff's licensing reviews. The Commission's oversight role should remain consistent regardless of whether a mandatory hearing is conducted.

Recent findings by the Bipartisan Policy Center, based on input from a broad spectrum of stakeholders, support legislative style mandatory hearings for combined license applications. The Center noted that legislative style hearings would allow appropriate and efficient wide-scale scrutiny that supplements the licensing review of the staff and the ACRS. As the Center noted, the staff's review is further supplemented by the detailed review of contested issues in hearings before the Licensing Boards.

Staff Recommendations:

- (1) The notice of hearing for the mandatory hearing should state that the Commission will determine whether the Staff's review has been adequate to support the findings set forth in 10 C.F.R. §§ 52.97 and 51.107.**

I disapprove issuance of a notice of hearing which states that the Commission will determine whether the staff's review was adequate. Instead, the notice should accurately reflect the more limited purpose of mandatory hearings - to provide greater transparency and increasing public confidence in our licensing process. At the Commission level, the hearings should demonstrate the oversight necessary and common to the type of facility under review, not a different and higher level of scrutiny. While Commission oversight provides an important check on the sufficiency of the staff's review, it is not necessary or, indeed, feasible for the Commission to review and assess every aspect of the staff's technical reviews of applications.

The mandatory hearing requirement was enacted to ensure openness and public confidence in the early days of nuclear regulation, when construction permits were issued without advance public notice based on safety evaluations that were not publicly available. It was never intended, and should not be interpreted, to require the Commission to conduct an all-encompassing review of every aspect of the staff's technical work. The Commission's decision to conduct mandatory hearings for COL applications was part of an effort to bring greater efficiency and effectiveness to the agency's review of those applications, not to impose enhanced Commission oversight for these particular applications. Keeping the Commission's review at a high level, with the focus on the most significant aspects of the staff review, is the

best use of Commission resources and the best way to bring efficiencies to our licensing process.

With the aid of the staff's SECY paper explaining the basis for each major finding by the staff and the ACRS report, the Commission can focus on any portions of the staff review documents of interest and direct questions on those matters to the staff and the applicant. The mandatory hearing allows additional explanation of the staff's review through the submission of testimony and responses to questions posed by the Commissioners. In this way, the mandatory hearing process will provide greater transparency to our licensing process. Staff and applicant testimony and responses will provide valuable information to public stakeholders as well as the Commission.

The Commission's role is distinct from the role of the staff, which is to conduct the detailed technical review and environmental assessment which form the basis for the regulatory findings in 10 C.F.R. §§ 52.97 and 51.107. This technical review, documented in the Safety Evaluation Report and the Environmental Impact Statement, is the basis for those regulatory findings which are necessary to support license issuance. The Commission should not duplicate the staff's review or delve into every aspect of the staff's review documents. I have every confidence that Commission oversight over the staff's licensing review has been, and will continue to be, adequate without reviewing and assessing the sufficiency of each aspect of the staff's technical review. The responsibility for issuing technical findings should remain with the staff which has performed the detailed technical review necessary to support them, even for those applications for which the Commission has conducted a mandatory hearing.

As I state below, I believe that the Commission decision should be documented in a Staff Requirements Memorandum (SRM). In the event that the Commission is fully satisfied with the staff's presentations, the decision would authorize the staff to make the regulatory findings in §§ 52.97 and 51.107 and decide whether to issue the license. In the event that the Commission is not fully satisfied with the staff's presentations, and believes that that the staff's review may be inadequate, the decision may direct the staff to take appropriate action, which may include further explanation or additional analysis, before authorizing the staff to make the relevant regulatory findings and a licensing decision.

While implementing this option would require an amendment to 10 C.F.R. § 51.107, this change could be incorporated into the rulemaking currently before the Commission, proposing amendments to our regulations in Part 2.

(2) The notice of hearing for the mandatory hearing should invite interested governmental entities to submit written statements to the Commission and should include the "Notice Language under Option 1" proposed above.

I approve the recommendation that interested governmental entities be permitted to submit written statements to the Commission provided that Indian Tribes are permitted the same opportunity. To avoid the appearance of favoritism, I believe that the Commission should not selectively offer the opportunity to participate. Our hearing process should ensure that all interested governmental entities and Indian Tribes are treated equally. While written statements provide an important means to bring concerns to the Commission, I believe that interested governmental entities and Indian Tribes should also be offered the opportunity to

participate in person. This will ensure full access to our hearing process. The language in the hearing notice should be revised accordingly.

(3) The mandatory hearing process should begin upon completion of the Staff's final environmental impact statement and final safety evaluation report, and not wait for either the design certification rulemaking or the contested proceeding to be completed.

I approve the recommendation to begin mandatory hearings upon completion of the final environmental impact statement and final safety evaluation report even when a contested hearing has been granted. My approval is predicated, in part, on support for legislative style hearings which authorize the staff to make the regulatory findings necessary to issue the license. Under this process, the Commission would not make the final regulatory decisions. Instead, the Commission would authorize the staff to do so, but only after all contested issues have been fully considered and resolved.

If, on the other hand, the Commission makes the regulatory findings, the Commission would be saying, among other things, that (1) all applicable standards and requirements have been met, (2) there is reasonable assurance that the facility will be constructed and will operate in conformity with the license and the Commission's regulations, (3) issuance of the license would not be inimical to the common defense and security or public health, (4) all requirements of NEPA have been satisfied, and (5) whether the license should issue based on a weighing of the environmental, economic, technical and other benefits against environmental and other costs. To the public, the Commission would appear to be prejudging the licensing decision before their safety and environmental concerns were considered in our adjudicatory process.

I disapprove the recommendation to begin mandatory hearings before completion of the design certification rulemaking. Because these rulemakings can identify issues that require changes to the application and staff review documents, the Commission cannot reach a fully informed decision in the mandatory hearing until after design certification. Recent experience has shown that reactor designs submitted for certification are not static, but subject to change during the review process. If the design referenced in a COL changes during the certification process, conforming changes to the COL application may well be necessary. These changes, in turn, may require additional staff review and revision of staff review documents. In these circumstances, the Commission would not have a final and complete record of the staff's review until the design certification rulemaking is complete. A Commission decision on the sufficiency of the staff's review before the completion of this process, which can substantially alter the application and the staff review documents, would be premature and potentially inadequate.


(4) The objective for completion of the mandatory hearing, including issuance of a final Commission decision with respect to the application, should be four months from the issuance of the Staff's final environmental impact statement and final safety evaluation report for the relevant COL application.

I disapprove this recommendation. As explained above, I do not believe that mandatory hearings should begin until after design certification rulemaking is complete. The amount of time necessary for the Commission to complete the hearing will also vary, depending on the complexity of the issues involved and the quality of the staff review documents. Because the impact of these circumstances cannot be generalized or predicted, I do not believe that there is

a sound basis for setting an arbitrary time frame for completing mandatory hearings. Nevertheless, reasonable steps should be taken to ensure that mandatory hearings should follow a disciplined and predictable process to avoid unnecessarily delaying the agency's licensing decisions. Therefore, I believe the Commission should establish milestones for publication in the federal register notice which account for the status of referenced design certifications, the submission of statements from governmental entities and Indian Tribes, and submission of testimony and responses to Commission questions. Mindful of those milestones, the Commission can establish firm schedules in the Federal Register. Each notice should establish a reasonable schedule which accounts for the specific nature of the case and also provides for timely and efficient resolution.

(5) The decision document from the mandatory hearing will take the form of a Commission adjudicatory decision.

I disapprove this recommendation. A fundamental purpose of the mandatory hearings is to allow the public to see the Commission's oversight role in these important applications. Public access to the Commission hearing, and particularly the interactions between the Commissioners, staff and applicant, will provide important insights into our licensing process and further public understanding of the technical areas focused on by the Commissioners. The documentation of the Commission's decision should focus on the outcome of hearing, describing the Commission's final conclusions in the form of an SRM. This will ensure that the hearing is concluded in a timely and efficient way while ensuring that the Commission's decision is fully transparent to the public. If the Commission is satisfied with the staff's review, the SRM would authorize the staff to make the regulatory findings and issue a license. In the event that the Commission believes that further staff review is necessary, the Commission should include direction to the staff on what additional explanation or analysis is necessary, which regulatory findings, if any, it is authorized to make, and how the staff may proceed regarding issuance of the license.



Gregory B. Jaczko

8/27/10

Date