
Task V.D: Licensing Process (Rev. 1)

The objective of this task was to enhance public participation in, and make needed reforms to, the nuclear licensing process.

ITEM V.D.1: IMPROVE PUBLIC AND INTERVENOR PARTICIPATION IN THE HEARING PROCESS

DESCRIPTION

This NUREG-0660,¹ Rev. 1 item called for the Commission to assess alternative methods to enhance public and intervenor participation in the hearing process by undertaking a pilot program for intervenor funding in accordance with the FY-81 budget request and by studying the concept of an Office of Hearing Counsel, as described by the President's Commission recommendation, and other concepts of Public Counsel (such as the Office of Public Counsel recommended by the NRC Special Inquiry Group or concepts used by some Public Service Commissions). If such concepts proved to be desirable, the Commission was to propose the needed legislation. This item was originally identified as Item 5 in Chapter V but was made Item V.D.1 in Rev. 1 to NUREG-0660.²

The NRC sought authorization to establish a pilot program³ to fund intervenors in its budget request for FY-81. Congress not only failed to enact such legislation, but included a provision in NRC's 1981 Appropriations Act (Public Law 96-367)⁴ which precluded the use of funds to pay the expenses of, or otherwise compensate, parties intervening in NRC proceedings. After enactment of this legislation and issuance of an opinion by the Comptroller General on December 3, 1980, the NRC terminated^{5, 6} a one-year pilot program it had established to provide intervenors certain forms of procedural assistance, such as free hearing transcripts and service of documents. Congress also barred the NRC from funding intervenors in FY-82 and FY-83. Prior to Congressional action, OGC had begun a review of the desirability of creating an Office of Public Counsel. After Congress prohibited intervenor funding, OGC terminated its review.

This item is related to increasing knowledge, certainty, and understanding of safety issues in order to increase confidence in assessing levels of safety and is, therefore, considered a licensing issue.

CONCLUSION

This Licensing Issue has been resolved.

¹ NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," U.S. Nuclear Regulatory Commission, May 1980, (Rev. 1) August 1980.

² NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," U.S. Nuclear Regulatory Commission, May 1980, (Rev. 1) August 1980.

³ Federal Register Notice 45 FR 49535, "10 CFR Part 2, Procedural Assistance in Adjudicatory Licensing Proceedings," July 25, 1980.

⁴ SECY-96-107, "Uniform Tracking of Agency Generic Technical Issues," U.S. Nuclear Regulatory Commission, May 14, 1996. [9605230140]

⁵ Federal Register Notice 46 FR 13681, "10 CFR Part 2, Domestic Licensing Proceedings; Procedural Assistance Program," February 24, 1981.

⁶ Memorandum for L. Bickwit from S. Chilk, "SECY-81-391—Provision of Free Transcripts to All Full Participants in Adjudicatory Proceedings: May 11, 1981 Comptroller General Decision," February 25, 1982

ITEM V.D.2: STUDY CONSTRUCTION-DURING-ADJUDICATION RULES

DESCRIPTION

This NUREG-0660,⁷ Rev. 1 item called for the Commission to complete rulemaking on whether construction should be permitted while challenges to a construction permit authorized by a licensing board are under administrative adjudication. This item was originally identified as Item 6 in Chapter V but was made Item V.D.2 in Rev. 1 to NUREG-0660.⁸

Following the TMI-2 accident, the Commission suspended in part its so-called immediate effectiveness rule. This rule had authorized the issuance of reactor construction permits or operating licenses immediately upon receipt of a favorable licensing Board decision, notwithstanding the filing of administrative appeals. In its place, the Commission instituted a mandatory review procedure for such decisions. In 1981, the rule was partially reinstated with respect to decisions authorizing the issuance of a reactor operating license. The rule, as applied to decisions authorizing reactor construction, has been the subject of a separate rulemaking.

The Commission published a notice of proposed rulemaking and requested comments on several options for amending the immediate effectiveness rule for construction permit decisions.⁹ On October 25, 1982, the Commission published a proposed rule that would make the effectiveness review procedures for construction permits conform to those for operating licenses.¹⁰ The Commission noted that it was still considering the various options presented and that revisions might be proposed later as part of broader reforms to the Commission's hearing process. As a result of further consideration, the Commission now has pending before it a new rulemaking proposal relative to immediate effectiveness reviews for both construction permits and operating licenses.

This item is related to increasing knowledge, certainty, and understanding of safety issues in order to increase confidence in assessing levels of safety and is, therefore, considered a licensing issue.

CONCLUSION

Staff stated in the Supplement to this report published in 1986 that a solution to this Licensing Issue was available, but the item had not been resolved. As a part of the improvements to NUREG-0933, the NRC staff clarified in SECY-11-0101, "Summary of Activities Related to Generic Issues Program," dated July 26, 2011,¹¹ that the Generic Issues Program will not pursue any further actions toward resolution of licensing and regulatory impact issues. Because licensing and regulatory impact issues are not safety issues by the classification guidance in the legacy Generic Issues Program, these issues do not meet at least one of the Generic Issues Program screening criteria and do not warrant further processing in accordance with Management Directive 6.4, "Generic Issues Program," dated November 17, 2009.¹² Therefore, this issue will not be pursued any further in the Generic Issues Program.

⁷ NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," U.S. Nuclear Regulatory Commission, May 1980, (Rev. 1) August 1980.

⁸ NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," U.S. Nuclear Regulatory Commission, May 1980, (Rev. 1) August 1980.

⁹ Federal Register Notice 45 FR 34279, "10 CFR Parts 2, 50, Possible Amendments to `Immediate Effectiveness Rule,'" May 22, 1980.

¹⁰ Federal Register Notice 47 FR 47260, "10 CFR Part 2, Commission Review Procedures for Power Reactor Construction Permits; Immediate Effectiveness Rule," October 25, 1982.

¹¹ SECY-11-0101, "Summary of Activities Related to Generic Issues Program," July 26, 2011.

[ML111590814]

¹² Management Directive 6.4, "Generic Issues Program," U.S. Nuclear Regulatory Commission, November 17, 2009.

ITEM V.D.3: REEXAMINE COMMISSION ROLE IN ADJUDICATION

DESCRIPTION

This NUREG-0660¹³ Rev. 1 item called for the Commission to review its role in adjudications to examine the extent of Commission involvement in licensing proceedings and to eliminate any undesirable and unnecessary insulation of the Commission from decision-making activities of the staff. This item was originally identified as Item 17 in Chapter V but was made Item V.D.3 in Rev. 1 to NUREG-0660.¹⁴

The Commission's role in adjudication is addressed under three topics: the immediate effectiveness review, the appellate process structure, and communications between the Commission and the staff.

Immediate Effectiveness Reviews

Following the TMI-2 accident, the Commission promulgated amendments to its regulations (10 CFR 2.764) which increased the Commission's role in adjudications. Under the revised regulations, decisions by Atomic Safety and Licensing Boards (ASLB) which authorize a utility to operate a facility at full power do not become effective upon issuance. Instead, the Commission conducts an "immediate effectiveness review" to determine whether the ASLB decision should be effective during the pendency of administrative appeals. The Commission seeks to complete these reviews within 30 days of the ASLB decision, or on an otherwise timely basis when the applicant has not completed construction or is not otherwise ready to operate at full power.

In 1981, the Commission established a Regulatory Reform Task Force to examine the NRC's licensing process. This Task Force recommended a different approach; it advocated the "immediate effectiveness" rule that was in place prior to the TMI-2 accident, i.e., construction permits and operating licenses should be issued on the basis of favorable ASLB decisions with an immediate effectiveness review by the Commission. In October 1982, the Commission issued for public comment a Notice of Proposed Rulemaking¹⁵ which, if adopted, would extend the immediate effectiveness review procedures to ASLB decisions which authorize the issuance of construction permits or limited work authorizations.

As is indicated in the discussion under Item V.D.2 above, the Commission now has pending before it a new rulemaking proposal relative to immediate effectiveness reviews for operating licenses.

Structure of the Appellate Process

The Commission has a three-tier adjudicatory system. Matters are first heard by an ASLB, followed in most cases by a mandatory review by an ASLAB and then by a discretionary Commission review. In December 1979, OGC prepared a study of the Commission's appellate system. One option examined, but not recommended, was to increase the Commission's adjudicatory role by eliminating the ASLAB. After receiving public comments on the study, the Commission decided not to abolish ASLAB review. The Regulatory Reform Task Force recommended to the Commission that it remove the ASLAB as an intermediate appeal body, but assign it responsibility of drafting Commission adjudicatory orders. The Commission did not adopt this recommendation.¹⁶

Communications Between the Commission and the Staff

The Commission's Regulatory Reform Task Force recommended that the Commission modify its separation of functions (10 CFR 2.719) and ex parte rules (10 CFR 2.780) to permit greater

¹³ NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," U.S. Nuclear Regulatory Commission, May 1980, (Rev. 1) August 1980.

¹⁴ NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," U.S. Nuclear Regulatory Commission, May 1980, (Rev. 1) August 1980.

¹⁵ Federal Register Notice 47 FR 47260, "10 CFR Part 2, Commission Review Procedures for Power Reactor Construction Permits; Immediate Effectiveness Rule," October 25, 1982.

¹⁶ Memorandum for J. Tourtelotte et al. from S. Chilk, "Addendum to SRM M841218—Briefing and Discussion on the Hearing Process, 2:00 p.m., Tuesday, December 18, 1984, Commissioners' Conference Room, D.C. Office (Open to Public Attendance)," January 31, 1985. [8502060511]

communication between the Commission and the staff on matters under adjudication.

On March 26, 1986, the Commission published a proposed rule to revise the Commission's separation of functions and ex parte rules.¹⁷ Present rules preclude communications between the Commission and any NRC staff member concerning a substantive matter at issue in a formal adjudicatory proceeding. Under this proposed rule, only those members of the NRC staff who are involved in an "investigative or litigative" function relative to a particular proceeding would be barred from communicating with the Commission on disputed issues in the proceeding, thereby allowing for much wider Commission access to staff expertise.

On November 2, 1983, the Commission published in the Federal Register an Advanced Notice of Proposed Rulemaking on the role of the NRC staff in the licensing process.¹⁸ After evaluating the public comments, the Commission determined that no change should be made in the staff's role and accordingly withdrew its Advance Notice of Proposed Rulemaking.¹⁹

This item is related to increasing knowledge, certainty, and understanding of safety issues in order to increase confidence in assessing levels of safety and is, therefore, considered a licensing issue.

CONCLUSION

Staff stated in the Supplement to this report published in 1986 that a portion of this item had not been resolved. As a part of the improvements to NUREG-0933, the NRC staff clarified in SECY-11-0101, "Summary of Activities Related to Generic Issues Program," dated July 26, 2011,²⁰ that the Generic Issues Program will not pursue any further actions toward resolution of licensing and regulatory impact issues. Because licensing and regulatory impact issues are not safety issues by the classification guidance in the legacy Generic Issues Program, these issues do not meet at least one of the Generic Issues Program screening criteria and do not warrant further processing in accordance with Management Directive 6.4, "Generic Issues Program," dated November 17, 2009.²¹ Therefore, this issue will not be pursued any further in the Generic Issues Program.

ITEM V.D.4: STUDY THE REFORM OF THE LICENSING PROCESS

DESCRIPTION

This NUREG-0660,²² Rev. 1 item called for the Commission to study alternatives to reform the licensing process. One suggested reform would abolish the present two-step process for initial licensing and would substitute a one-step process with increased public involvement prior to the hearing. It would also involve continued NRC jurisdiction after issuance of the single permit to verify that plant construction conforms with plans and permit specifications. The Commission was to study the standardization of nuclear power plants and consider suspending review and proceedings for applications for CPs and LWAs until the reform issues were resolved. This item was originally identified as Item 9 in Chapter V but was made Item V.D.4 in Rev. 1 to NUREG-0660.²³

In its first formal response to the President's Commission on the TMI-2 accident, the Commission noted that a revision of licensing procedures to emphasize early and effective resolution of safety issues would

¹⁷ Federal Register Notice 51 FR 10393, "10 CFR Parts 0 and 2, Revision of Ex Parte and Separation of Functions Rules Applicable to Formal Adjudicatory Proceedings," March 26, 1986.

¹⁸ Federal Register Notice 48 FR 50550, "10 CFR Part 2, Rules of Practice for Domestic Licensing Proceedings; Role of NRC Staff in Adjudicatory Licensing Hearings," November 2, 1983.

¹⁹ Federal Register Notice 51 FR 36811, "10 CFR Part 2, Rules of Practice for Domestic Licensing Proceedings; Role of NRC Staff in Adjudicatory Licensing Hearings," October 16, 1986.

²⁰ SECY-11-0101, "Summary of Activities Related to Generic Issues Program," July 26, 2011.

[ML11590814]

²¹ Management Directive 6.4, "Generic Issues Program," U.S. Nuclear Regulatory Commission, November 17, 2009.

²² NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," U.S. Nuclear Regulatory Commission, May 1980, (Rev. 1) August 1980.

²³ NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," U.S. Nuclear Regulatory Commission, May 1980, (Rev. 1) August 1980.

require legislation (NUREG-0632).²⁴ Prior to forwarding proposed legislation to the Congress, the Commission took steps to improve the balance and efficiency of the power reactor licensing process. In May 1981, a statement of policy on the conduct of licensing proceedings was issued describing procedural devices which could expedite the hearings and providing Commission guidance on the use of such tools.²⁵ In addition, the Commission's rules of practice (10 CFR 2) were amended to expedite certain aspects of adjudicatory proceedings. Two rules were promulgated in 1982: (1) elimination of the need for power and alternative energy source issues from reactor operating license proceedings; and (2) elimination of the requirements for the review of financial qualifications of state-regulated public utilities applying for permits or licenses. Both of these rules were expected to further expedite licensing hearings. In view of the limitations of rulemaking as a means of reforming the nuclear power plant licensing process, the Commission proceeded to develop proposals for statutory changes that would accomplish the desired reforms.

In November 1981, the Commission established the Regulatory Reform Task Force²⁶ to review the NRC's licensing process. As a result of the efforts of this group and senior NRC officials, the Commission in June 1982 issued for public comment a draft of proposed legislation, "Nuclear Standardization Act of 1982," which included provisions for one-step licensing, issuance of a combined construction permit and operating license, and licensing of standardized plant. After review and consideration of the public comments and comments provided by an Ad Hoc Committee for the Review of Nuclear Reactor Licensing Reform Proposals, the Commission developed a draft bill, "Nuclear Power Reactor Licensing Reform Act of 1983," and on February 21, 1983 forwarded it to the Congress.²⁷ The 98th Congress did not act on the Commission's 1983 legislative proposal. The Commission submitted a revised proposal to the 99th Congress in 1985, but again Congress did not act.

The Regulatory Reform Task Force proposed that a number of reforms be accomplished via rulemaking: (1) amendment of 10 CFR 50 to modify the backfitting provision and associated sections applicable to reactors; (2) amendment of 10 CFR 2 and 10 CFR 50 to improve the quality of the hearing process; (3) amendment of 10 CFR 2 regarding separation of functions and ex parte communications in on-the-record adjudications; and (4) amendment of 10 CFR 2 to limit NRC staff participation as a party in contested initial license proceedings to issues on which the staff disagrees with the license applicant.

The Commission on September 20, 1983 issued a policy statement²⁸ on revising the backfitting process. It also issued an Advanced Notice of Proposed Rulemaking²⁹ on the backfitting process and presented a number of questions for public response. The final rule³⁰ on the backfitting process was published in September 1985.

The Commission on November 23, 1983 issued an Advance Notice of Proposed Rulemaking on amending its rules of practice (10 CFR 2) to change the staff's role in adjudicatory licensing hearings summarized this issue and presented a number of options for rulemaking and solicited public response to a set of questions.⁸⁷⁷ The Commission withdrew this notice after determining that no change in the staff role was warranted.³¹

²⁴ NUREG-0632, "NRC Views and Analysis of the Recommendations of the President's Commission on the Accident at Three Mile Island," U.S. Nuclear Regulatory Commission, November 1979.

²⁵ Federal Register Notice 46 FR 28533, "Statement of Policy on Conduct of Licensing Proceedings," May 27, 1981.

²⁶ Memorandum for All Employees from N. Palladino, "Regulatory Reform Task Force," November 17, 1981.

²⁷ Letter to the Honorable Thomas P. O'Neill, Jr. from N. Palladino, February 21, 1983.

²⁸ Federal Register Notice 48 FR 44173, "10 CFR Part 50, Revision of Backfitting Process for Power Reactors," September 28, 1983.

²⁹ Federal Register Notice 48 FR 44217, "10 CFR Part 50, Revision of Backfitting Process for Power Reactors," September 28, 1983.

³⁰ Federal Register Notice 50 FR 38097, "10 CFR Parts 2 and 50, Revision of Backfitting Process for Power Reactors," September 20, 1985.

³¹ Federal Register Notice 51 FR 36811, "10 CFR Part 2, Rules of Practice for Domestic Licensing Proceedings; Role of NRC Staff in Adjudicatory Licensing Hearings," October 16, 1986.

The Commission on April 12, 1984 published³² a Federal Register notice soliciting public comments on the changes to the hearing process proposed by the Regulatory Reform Task Force. After reviewing the public comments, the Commission determined that four of the proposals merited further consideration. These were published as a proposed rule.³³ The comment on October 17, 1986 and final action on the proposals is expected in early 1987.

This item is related to increasing knowledge, certainty, and understanding of safety issues in order to increase confidence in assessing levels of safety and is, therefore, considered a licensing issue.

CONCLUSION

Staff stated in the Supplement to this report published in 1986 that this item was only partially resolved. As a part of the improvements to NUREG-0933, the NRC staff clarified in SECY-11-0101, "Summary of Activities Related to Generic Issues Program," dated July 26, 2011,³⁴ that the Generic Issues Program will not pursue any further actions toward resolution of licensing and regulatory impact issues. Because licensing and regulatory impact issues are not safety issues by the classification guidance in the legacy Generic Issues Program, these issues do not meet at least one of the Generic Issues Program screening criteria and do not warrant further processing in accordance with Management Directive 6.4, "Generic Issues Program," dated November 17, 2009.³⁵ Therefore, this issue will not be pursued any further in the Generic Issues Program.

³² Federal Register Notice 49 FR 14698, "10 CFR Parts 2 and 50, Request for Public Comment on Regulatory Reform Proposal Concerning the Rules of Practice, Rules for Licensing of Production and Utilization Facilities," April 12, 1984.

³³ Federal Register Notice 51 FR 24365, "10 CFR Part 2, Rules of Practice for Domestic Licensing Proceedings —Procedural Changes in the Hearing Process," July 3, 1986.

³⁴ SECY-11-0101, "Summary of Activities Related to Generic Issues Program," July 26, 2011. [\[ML111590814\]](#)

³⁵ Management Directive 6.4, "Generic Issues Program," U.S. Nuclear Regulatory Commission, November 17, 2009.