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December 18, 1992

SECY-92-415

POLICY ISSUE

For: The ~~NEGATIVE~~ (CONSENT)

From: William C. Parler
General Counsel

Subject: REVIEW OF THE COMMISSION'S REGULATIONS AND
PRACTICE GOVERNING CITIZEN PETITIONS UNDER
10 CFR 2.206 FOR INSTITUTING PROCEEDINGS
AGAINST LICENSEES

Purpose: To recommend that the Commission initiate an
evaluation of its regulations and practice
under 10 CFR 2.206 governing citizen
petitions to institute proceedings to
modify, suspend or revoke licenses.

Background: After the Commission grants an operating
license (or, in the future, a combined
license) for a nuclear power plant, the
primary mechanism for the public to request
Commission review of a potential safety
problem at an operating plant is the "2.206"
petition. The Commission's regulations in
10 CFR 2.206 provide an opportunity for a
person to request that the Commission
institute proceedings under 10 CFR 2.202 to
modify, suspend, or revoke a license or take
such other action as may be proper. These
regulations are applicable to the holder of
any Commission license, but the bulk of the
2.206 petitions have concerned power
reactors. The Director of the NRC office
responsible for the subject matter of the
petition has the responsibility for deciding
whether to initiate a proceeding against the
licensee. If the Director denies the
petition, the Director must prepare a written
Director's Decision stating the reasons for
the denial. The Atomic Energy Act of 1954,

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as amended, does not provide a right to a public hearing on a 2.206 petition. Although the Commission may, on its own initiative, review a Director's decision not to institute a proceeding, no request by the public to undertake such a review will be entertained by the Commission. The courts have held that decisions on 2.206 petitions are enforcement proceedings that are pre-emptively unreviewable by the courts under the Administrative Procedure Act. However, under the National Energy Policy Act of 1992, denial of a petition to amend a combined license prior to operation would be subject to judicial review.

Discussion:

The 2.206 provisions have been part of the Commission's regulatory framework since the Commission was established in 1975. No major modifications have been made to the rule, or to the procedures used to implement the rule, since that time, except to remove the right to appeal to the Commission. However, it remains the only opportunity recognized in the Commission's rules for the public to raise potentially significant safety issues for NRC consideration at a licensed plant. Unlike most Federal environmental statutes, the Atomic Energy Act makes no provision for citizens suits against licensees, and because there are no public hearings on 2.206 petitions, interested citizens have less of an opportunity to participate in public hearings on safety concerns for licensed nuclear plants than they would have on other environmental concerns for that same plant. Furthermore, the substantial majority of 2.206 petitions have been denied on the basis of the petitioner's written submission. This has caused the 2.206 process to be the subject of substantial criticism from citizen groups and some members of the Congress.

I strongly believe that it would be timely for the Commission to initiate an effort, with the review of the 2.206 process as a centerpiece, to determine what revisions, if any, should be made to our regulatory process to enhance public participation. Undertaking this evaluation would be consistent with the Commission's efforts to increase public disclosure and participation in its

decisionmaking activities. In keeping with this philosophy, the first step in the evaluation of the 2.206 process would be a public workshop where knowledgeable affected interests would share their advice and recommendations on the 2.206 process in a discussion with the NRC staff. Participants would be invited from such interests as citizen groups, state government, the nuclear industry, and federal agencies (such as the Administrative Conference of the United States). I would anticipate holding a one day workshop on this subject in late March, 1993.¹

As a focus for the workshop discussion, OGC would prepare, in coordination with other interested offices such as the Office of Enforcement and the Atomic Safety and Licensing Board Panel, a background paper that provides information on the 2.206 process and also identifies potential options for improving the 2.206 process. The workshop discussion, and any written comments on the background paper, would form the basis for evaluating what changes should be made to the 2.206 process. This evaluation would then be submitted to the Commission for review and decision.

I would also plan to reserve a portion of the workshop to solicit ideas from the participants on what other specific mechanisms the Commission might implement to improve the effectiveness of public participation in the Commission's regulatory processes. This would include the use of alternative dispute resolution techniques, such as negotiated rulemaking, and informal rather than formal adjudications, in specific substantive areas of Commission responsibility. I plan to provide the Commission with an evaluation of the suggestions made in this regard, as well as recommendations for further action.

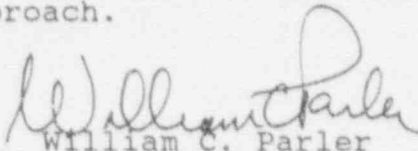
¹ The workshop would be with similar in approach to that approved by the Commission in regard to SECY-92-170 and held on July 20, 1992 to solicit input from interested persons on the conduct of a design certification rulemaking proceeding.

Recommendation: That the Commission approve the initiation of a review of the 2.206 process beginning with a public workshop to discuss the relevant issues set forth in a background paper to be developed by the Office of the General Counsel.

Note: Unless advised to the contrary by the Commission within ten working days of the date of this Paper, the Office of the General Counsel will begin the development of the background paper and the planning for the workshop. I intend to submit an information paper to the Commission on the status of workshop planning in February, 1993.

Resources: A small amount of funds will be necessary for securing a suitable meeting location in the Washington, D.C. area for the workshop. The staff resources necessary to prepare the background paper, and to conduct the workshop, will not be substantial.

Coordination: The Executive Director for Operations concurs with this approach.


William C. Parler
General Counsel

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Monday, January 4, 1993, that the Commission, by negative consent, assents to the action proposed in this paper.

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