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March 9, 1981

DOCKET NUMBER PROPOSED RULE PR-2 (699)
(46 FR 17216)

Chairman Joseph M. Hendrie
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
11th Floor, Room H-1156
Washington, D.C. 20555

Dear Mr. Chairman:

We are following with interest the Commission's continuing discussion of "Revised Licensing Procedures"--part of its effort to mitigate or eliminate delays in completing licensing action on a number of nuclear power plants which will be ready to operate in the next several years. In those discussions, a considerable amount of time has been spent in attempting to establish the time period which would (in the "normal" case) elapse between issuance of the NRC Staff's last supplement to the safety evaluation reports (SSER) and commencement of the evidentiary hearing.

We suggest that an essential point is being overlooked in those discussions and unnecessary and expensive prolongation of the adjudicatory process is thereby being invited.

For the most part (and, obviously, there will be exceptions), an SSER does not address any issue which is new to a diligent participant in the adjudicatory proceeding which began years before that document was produced.

In the usual case, therefore, there is simply no reason for a lengthy period between issuance of the SSER and convening the hearing. Discovery should long since have been completed; motions for summary disposition likely to be successful (i.e., on matters as to which there is no genuine issue to be heard) can have been filed and answered; and testimony can have been prepared and filed on many issues (if not all issues except those to be dealt with in the SSER).

We note that these facts appear to have been recognized when the Staff prepared its "Assumptions Issued for Projecting Target Schedules" which are attached to first Monthly Status Report (January 1981) to Congress. The NRC Staff there assumed that hearings would begin no later than two months after the issuance of the SSER. The two-month time period is used only for a "Heavily contested proceeding." A one-month period is allowed for a "Moderately contested proceeding."

Nevertheless, the current Commission discussions of revised licensing procedures seem to assume that a hearing cannot begin until substantially longer periods than one or two months after the issuance of the SSER have elapsed. This assumption appears to have grown from knowledge of what is in fact happening in NRC proceedings and from the rarely-questioned supposition that the SSER ordinarily justifies the assertion of new contentions and the triggering of a new round of discovery.

In our view, issuance of the SSER will justify admission of new contentions or new discovery only in exceptional circumstances. The regulations contained in 10 C.F.R. Part 2 require that a notice of opportunity for hearing be published shortly after the FSAR (or PSAR) is docketed; intervention petitions are filed shortly thereafter; and a prehearing conference is convened "within ninety (90) days after the notice of hearing is published, or such other time as the Commission or the presiding officer may deem appropriate . . . ." (10 C.F.R. § 2.751a.) The order following that prehearing conference admits intervenors and contentions and triggers the initiation of discovery; discovery continues while Staff documents such as the Draft and Final Environmental Statements, the SER and Supplemental SER are being prepared.

The "early" commencement of the proceeding (i.e., shortly after docketing of the application) was deliberately prescribed by amendments to Part 2 adopted by the Commission in 1972. Among the purposes of those amendments were "to provide potential intervenors a better opportunity for more meaningful participation in the hearing process" and to avoid the type of delay which the Commission now seems to assume is unavoidable. In 1972 the Commission "expressly recognize[d] the positive necessity for expediting the decisionmaking process and avoiding undue delays." Adoption of the "early start" provisions was intended to accomplish that. (See "Restructuring of Facility License Application Review and Hearing Processes," 37 Fed. Reg. 15,127-43 (July 28, 1972).) The Commission's present goal is similar and it cannot be met by adoption of planning assumptions or policy statements which would routinely admit (or appear to encourage the admission of) new contentions and new discovery after publication of the SSER.

The SSER may address matters not dealt with in the SER and/or questions asked by the ACRS. However, the essential point is that, in most cases, those matters will not be new to the participants in the proceeding. That is to say, it will long have been evident that the questions the SSER addresses are involved in the proceeding and that these matters have not yet been resolved to the Staff's satisfaction. Furthermore, the SSER will reflect what has been generated by oral and written exchanges between the Staff and the applicant during review of the FSAR. Under governing Appeal Board decisions, intervenors receive copies of relevant letters and other documents exchanged between the applicant and the Staff; Staff policy requires giving intervenors advance notice of and opportunity to attend meetings between the Staff and the applicant. Thus, an intervenor with an interest in the matters addressed in the SSER should be familiar with them long before that document is issued.

The purpose of discovery is to reveal the material on which parties rely, which may lead to evidence relevant to the admitted contentions. The exchanges between the Staff and the applicant usually contain or point to the existence of all or the bulk of such material. A request to admit a new contention can be made as soon as such exchanges indicate that it is justified. In most cases, this would be many months before the issuance of the SSER. Consequently, the issuance of the SSER should not ordinarily justify the filing of new contentions or any extensive additional discovery.

Of course, discovery is not the only activity which may occur after publication of the SSER. The schedules which have been discussed by the Commission acknowledge that motions for summary disposition may be filed, answered, and ruled on and that testimony must be filed before the hearing begins. However, the SSER would not usually contain significant information relating to a matter which is the subject of a motion for summary disposition (i.e., as to which there is no genuine issue to be heard) and the planning schedules therefore need not assume that such motions would be affected by the SSER in the "normal" case. Testimony on topics covered by the SSER can be completed after its issuance but convening of the hearing (particularly on other topics) need not be delayed for that purpose.

In summary, it is our view that existing Commission regulations and policy contemplate that hearings, even on matters covered by an SSER, will convene shortly after the SSER is

published. We urge the Commission to reaffirm and emphasize that policy, which was adopted and intended to be implemented by the 1972 amendments to Part 2.

Very truly yours,

Kathleen H. Shea

KHS:vd

cc: Commissioners Ahearne, Bradford, Gilinsky
Mr. Dircks
Mr. Bickwit
Mr. Shapar