



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

January 9, 1986

MEMORANDUM FOR: Chairman Palladino  
Commissioner Roberts  
Commissioner Asselstine  
Commissioner Bernthal  
Commissioner Zech

FROM: *MB for MGM* Martin G. Malsch  
Deputy General Counsel

SUBJECT: COMMENTS ON THE STAFF'S PROPOSED  
FINAL SHOLLY REGULATIONS (SECY-85-209A)

We offer the following five brief comments on the proposed final rule package:

- 1) The staff paper suggests proposed changes to Atomic Energy Act section 189a. SECY-85-209A at 3-4. The language appears to be a good start toward alleviating some of the problems which the NRC staff seems to have encountered in administering the amendment notice requirements.

However, the Commission should weigh carefully the need for legislation in this area. Since any proposed legislation could easily have the appearance of decreasing opportunities for public participation in nuclear licensing, the legislative package will need to make a fairly strong case that the statute is imposing unnecessary burdens on the agency and licensees. If the Commission approves the staff's approach, we will work with staff to refine the language and to develop as strong a legislative package as possible.

- 2) One commenter objected to the imposition of additional fees to finance activities involving no significant hazards determinations, asserting that licensees wouldn't be the identifiable or even primary beneficiaries of these activities. Id. at 64-5. We suggest the response which follows as a replacement for staff's:

It is clear that the issuance of a license amendment is a "special benefit" for the licensee, and that the Commission is therefore authorized to impose a fee to recover the cost to the agency of

Contact:  
Michael B. Blume, OGC  
x41493

B602040387 B60130  
PDR 10CFR PDR  
PT9.7

conferring that benefit. Mississippi Power & Light Co. v. Nuclear Regulatory Commission, 601 F.2d 223, 227 (5th Cir. 1979). The notice and consultation process established in the present rulemaking, together with all other aspects of the no significant hazards consideration determination, reflects statutory requirements that must be met in the issuance of a license amendment. Accordingly, the NRC resources expended in this part of the amendment proceedings are costs necessarily incurred by the agency on behalf of the licensee. Thus the Commission may include these costs in its fee for issuing the amendment.

While the Commission believes that the public as well as the licensee will benefit from this clarification and improvement in the amendment process, the "special benefit" of receiving a particular license amendment pertains to the licensee alone, and the Commission may therefore assess the full cost of providing it. Mississippi Power & Light, supra, at 230.

- 3) We do not believe that staff's analysis regarding the application of the backfit rule (id. at 91) is in accord with that rule. We would delete staff's analysis and replace it with the simple statement that because the final rule imposes no requirements on licensees beyond those which were already imposed in the Interim Final Rule, the final rule is not a backfit and no backfit analysis is required.
- 4) Staff's addition of a provision intended to preclude adjudicatory board litigation of the staff's no significant hazards determinations is worthwhile. See § 50.58(b)(6), id. at 99. However, the language should be clarified, as follows:

No petition or other request for review of or hearing on a Director's significant hazards consideration determination will be entertained by the Commission. The director's determination is final, subject only to the Commission's discretion, on its own initiative, to review the staff's determination.

- 5) The rulemaking notice should be reviewed before publication to eliminate grammatical errors and poor word usage.

cc: EDO  
ELD  
OPE  
SECY