

A circular stamp with a clock-like border. The text inside the circle reads: "AUG 14 1973" in large, bold letters. Below it, in smaller text, is "Office of the Secretary" and "Public Proceedings Branch". The stamp is slightly tilted.

Amendment to Source
Material License SUB-1010

~~AUG~~ JUL 14 1973

The Atomic Energy Act (section 189; USC 2239) and the Commission's rules (10 CFR 2.714) indeed grant to persons whose interests may be

affected by certain Commission action the right to petition for leave to intervene in a proceeding. The law and the rules in this regard have long been a matter of published, public record. NRDC is not charging that such a right has been denied in the instant case (or that NRDC wishes to exercise this right), but rather is charging that an explicit reminder of the existence of the right was not included in the notice of hearing.

NRDC advances the argument that the hearing in the instant proceeding somehow constitutes "proposed action" within the meaning of 10 CFR 2.105. As such, NRDC argues that the Commission should have published a notice of proposed action in the FEDERAL REGISTER containing, inter alia, an explicit invitation for petitions to intervene, which that section concededly requires.

NRDC has misinterpreted the object and effect of 10 CFR 2.105, which is to provide an opportunity for a hearing and an invitation for interested persons to intervene therein in those instances where the Commission proposes to take affirmative action in granting a license or amendment and no provisions for hearing or intervention have been otherwise provided for either by law or Commission determination. */

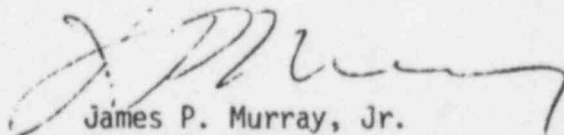
*/ See 10 CFR 2.105(e), which provides: "If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice, the Director of Regulation will issue the license, inform the appropriate State and local officials, and cause to be published in the FEDERAL REGISTER a notice of issuance of the license." (emphasis added)

The clear purpose of such a provision is to afford the applicant and the interested public the opportunity to express their views to the Commission prior to issuance of the license or amendment. The section is unrelated to the contents of notices of hearing, which are set forth in sections 2.104 and 2.703.

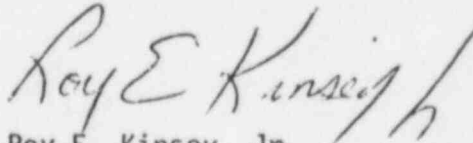
In the instant case, the license amendment requested by Kerr-McGee was denied. No determination was made pursuant to 10 CFR 2.105(a)(4), nor was one necessary, that a public hearing should be afforded prior to denial. Consequently, the procedures of 10 CFR 2.105 were not involved and no notice of "proposed" action was (or was required to be) given. Subsequent to the denial, Kerr-McGee demanded a hearing, to which it is entitled under section 189 of the Atomic Energy Act, as implemented by 10 CFR 2.103. It is a hearing "required" by the Act and the Commission's regulations and is properly noticed under the provisions of 10 CFR 2.104.

Notwithstanding this incorrect analysis of the regulations, the Staff would not object to the Board's issuing a Supplemental Notice of Hearing, in contrast with a second Notice of Hearing issued by the Commission, noting that all interested persons may petition for leave to intervene within a time period deemed reasonable by the Board.

Respectfully submitted,



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Dated at Bethesda, Maryland
this *14th day of August*

Roy E. Kinsey, Jr.
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