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Statement of Policy: Handling of Late Allegations

AGENCY: Nuclear Regulatory Commission

ACTION: Statement of Policy: Handling of Late Allegations.

SUMMARY: This policy statement presents the criteria the Commission will follow in addressing late allegations received from sources outside the Commission, in the context of licensing reviews. It also directs that the staff's procedures for notifying Atomic Safety and Licensing Boards, Atomic Safety and Licensing Appeal Boards, and the Commission of the receipt of allegations be revised to provide for an initial, coarse screening prior to issuance of a Board Notification.

EFFECTIVE DATE: March 19, 1985.

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SUPPLEMENTARY INFORMATION:

Statement of Policy

The purpose of this policy statement

is to explain the policy which the Commission expects to follow regarding the treatment of late allegations, received from sources outside the Commission, in operating license reviews and in the board notification process. The focus of this statement is on NRC staff and Commission pre-licensing safety reviews of uncontested issues, and Commission pre-licensing immediate effectiveness reviews of contested issues. The treatment of allegations in formal adjudicatory licensing proceedings will continue to be governed by the Rules of Practice in 10 CFR Part 2. Apart from this policy statement, the Commission has initiated a rulemaking to codify NRC caselaw criteria for reopening a closed evidentiary record in a formal licensing proceeding and to specify further the documentary bases for motions to reopen, including those which may be based on allegations. 49 FR 50189 (December 27, 1984).

The most fundamental tenet flowing from the NRC's statutory mandate under the Atomic Energy Act is that a license may be issued only if it can be found that there is reasonable assurance that the activity to be authorized presents no undue risk to the health and safety of the public. There can be no abdication of the responsibility to make this determination and if there is a serious question as to the ability to make such finding, no license may be issued and the time necessary to resolve such question must and will be taken. Therefore, in the context of late allegations, it is necessary that appropriate criteria be applied to enable the decisionmaker, be it the NRC's staff or the Commission itself, to expeditiously determine the significance, in terms of safe operation of the facility, of any allegations made.

In connection with its review of a number of recent cases, the NRC has been confronted with the task of addressing large numbers of allegations which were brought to its attention very shortly before, and in some cases on the eve of, the date on which a decision on whether to authorize the issuance of an operating license was to be made. Some of these allegations related to matters in controversy and others related to previously uncontested issues not under consideration by a particular adjudicatory tribunal. Significant commitments of staff resources often must be diverted at the last minute to address large numbers of late allegations, many of which have proven to be unsubstantiated or of little, if any safety significance.

Ideally, all allegations concerning a particular facility will be resolved before any license is authorized. If, however, because of the number of allegations and/or their tardy submission, all allegations cannot be resolved in a timeframe consistent with reasonable and responsible licensing action, it may be necessary to give

priority to those allegations which, because of their potential impact on safety, must be resolved before licensing action can be taken.

Initial Screening of Allegations

Any concerns bearing on the safety of a facility should be brought promptly to the attention of the applicant or licensee.¹ If, however, this approach is unsatisfactory, any person is free to bring such concerns directly to the NRC. To eliminate unnecessary delay in the licensing process to the extent possible, any person who has an allegation concerning the design, construction, operation, or management of a nuclear power plant has a duty to bring such information to the Commission's attention as promptly as possible. All allegations should be specific and documented to the fullest extent possible. Those submitting allegations in good faith should be aware that appropriate protection against retaliatory action by an applicant or licensee (including its contractors and subcontractors) is afforded by Section 210 of the Energy Reorganization Act of 1974, 42 U.S.C. 5851. All parties and persons are reminded that Federal law imposes penalties upon any person who intentionally makes any false statement or representation to any agency of the United States.

In reviewing allegations, the appropriate Commission staff office will first determine whether, if true, the allegations are material to the licensing decision in that they would require denial of the license sought, the imposition of additional conditions on such license, or further analysis or investigation. Allegation which, even if true, are not material to any licensing decision or which on their face or after initial inquiry are determined to be frivolous or too vague or general in nature to provide sufficient information for the staff to investigate will receive no further consideration.

As to allegations which are material to the licensing decision, the Commission staff will next determine whether the information presented is new in the sense of raising a matter not previously considered or tending to corroborate previously received but not yet resolved allegations. In making this determination, all information available to the Commission will be considered, including that previously provided by an applicant or licensee and that obtained by the Commission in the course of its review and inspection efforts or from its investigation of prior allegations. In some cases, information already available to the NRC may be sufficient to resolve certain allegations. However, if an allegation is found to be both material and new, the staff will

¹ The Commission encourages the establishment of programs by utilities for the purpose of identifying and resolving allegations affecting safety in a timely manner as design and construction of a nuclear facility proceeds.

investigate the allegation further.

Further Review

If the staff determines that, as a result of the number of allegations or the timeframe in which they are received it appears likely that full consideration of all allegations cannot be accomplished consistent with responsible and timely Commission action, the Commission staff will conduct a further screening of the allegations to determine their significance to safety and therefore what priority should be assigned relative to the activity to be authorized.²

The following screening criteria will be considered:

1. The likelihood that the allegation is correct, taking into consideration all available information including the apparent level of knowledge, expertise, and reliability of the individual submitting the allegation in terms of the allegation submitted and the possible existence of more credible contrary information.

2. The need for prompt consideration of the allegation recognizing the public interest in avoiding undue delay. If the staff determines that an allegation raises a significant safety concern regarding, for example the design, construction, or operation of a facility or about quality assurance or control or management conduct, which brings into question the safe operation of the facility at a given stage of operation, the allegation must be addressed prior to authorizing that stage. For purposes of this policy statement, an allegation will be considered safety significant if the allegation would, if true, (1) raise a significant question about the ability of a particular structure, system, or component to perform its intended safety function or (2) raise a significant question of management competence, integrity, or conduct or about implementation of the quality assurance program, sufficient to raise a legitimate doubt as to the ability to operate the plant safely. Allegations which are not safety significant will be resolved in the normal course of business independent of license issuance.

Board Notification Procedures

Parties to ongoing adjudicatory proceedings have an obligation to bring allegations to the attention of the presiding board. All parties have an obligation to inform boards promptly of relevant and material information that may affect the decisionmaking process.

The Commission's staff, in accordance with its obligations for board notification has in the past submitted

² As a general matter, the Commission has authorized issuance of operating licenses first for low power testing (up to 5% of rated power) and subsequently for full power operation (operation above 5% of rated power). In some cases these steps have been further refined, for example, into fuel load, hot system testing, criticality and zero power testing. Other refinements too are possible and may be authorized.

allegations to boards promptly and without awaiting their resolution or determination of significance relative to the decisionmaking process. This practice is consistent with the Commission-approved board notification policy. However, it has resulted, on occasion, in presenting boards with new information, the significance of which is not readily apparent. Consequently, in the future, staff board notifications of allegations will not be made until the staff has made at least an initial screening of the allegations. Only those allegations which are found not to be frivolous, which are relevant and material to the decisionmaking process (as determined under existing board notification procedures) and which are determined to warrant further scrutiny will be submitted to the presiding tribunal. Board notifications should still be made promptly, consistent with the need and time required for screening. The staff's board notification procedures should be revised accordingly.

Dated at Washington, D.C., on this 13th day of March 1965.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Assistant Secretary.