

in controversy are to be authorized for distribution within 30 days of the finding that they were not in controversy—that is, no later than April 29. Prior to the passage of the Copyright Royalty Tribunal Reform Act, the Tribunal was given one year to resolve any controversies in royalty distribution after their declaration. As a result of this one year period, the Tribunal had a greater amount of time to address controversies and address issues such as discovery and collection and presentation of evidence, and this time period was reflected in the construction and operation of the Tribunal's procedural and administrative rules. However, with the passage of the CRT Reform Act, the time period for resolving controversies has been cut in half. This time reduction, along with the novel demands and requirements of the CARPs, has required the Copyright Office to adopt completely new rules and procedures for distribution of royalties and has, consequently, made the meeting of certain statutory deadlines exceedingly difficult. Nowhere is this more evident than the March 30 deadline for declaring DART distribution controversies.

The Administrative Conference of the United States has considered the issue of how agencies should respond to circumstances that affect their ability to adhere to schedule, and has issued a series of recommendations concerning statutory time limits. 43 FR 27509 (June 26, 1978), 1 CFR 305.78-3. The Administrative Conference said:

[I]t should be recognized that special circumstances, such as a sudden substantial increase in caseload, or complexity of the issues raised in a particular proceeding, or the presence of compelling public interest considerations, may justify an agency's failure to act within a predetermined time. An agency's departure from the legislative timetable should be explained in current status reports to affected persons or in a report to Congress.

Id. at para. 4.

The Copyright Office has already faced the difficulties of meeting the March 30 deadline for declaring DART controversies and initiating arbitration. The Office postponed the deadline for the 1992 and 1993 DART royalties, prior to the consolidation of these royalties with the 1994 royalties, because it was soon after the passage of the CRT Reform Act and we had not yet implemented procedural rules for the CARPs. See 59 FR 9773. Although we have now adopted final procedural rules, 59 FR 63025, good cause nonetheless remains for postponing the statutory deadline of March 30, 1995, for declaring controversies and

initiating arbitration for the 1992-94 DART proceeding.

An important facet of the new CARP procedural rules adopted by the Office are regulations creating a 45-day precontroversy discovery period, prior to initiating arbitration, in which claimants are directed to exchange their direct cases, make discovery requests, file their objections regarding selection of the arbitrators, and otherwise engage in precontroversy motions practice. 37 CFR 251.45. Adoption of a precontroversy discovery period was strongly urged by all of the commentators to the Office's rulemaking proceeding, see 59 FR 63030, and was endorsed by Representative William Hughes, Chairman of the House Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary, in his statement accompanying the House version of the Copyright Royalty Tribunal Reform Act. See 139 Cong. Rec. H10973 (daily ed. Nov. 22, 1993) ("In order to reduce the amount of actual litigation time, and thereby reduce expenses, I encourage the Librarian to promulgate regulations permitting exchange of information before the tolling of the 180-day decision period, and, to the extent practicable, generally to permit precontroversy discovery.").

There can be no meaningful precontroversy discovery period under the current requirement of beginning DART arbitration within 30 days of filing the claims. The 45-day precontroversy discovery period prescribed in § 251.45(a) could not take place prior to March 30, since it would overlap the period for filing claims. Shortening the period to 30 days beginning the first day after the filing of claims would reduce the benefits of precontroversy discovery enjoyed by claimants in other proceedings and deny DART claimants a period in which to negotiate settlements. Exchange of direct cases on the first day after the close of the filing period for claims is also impossible since the Office will not have had sufficient time to prepare the claimant service list, and it is highly unlikely that most claimants will be prepared to exchange their direct cases immediately after the filing period. There is, therefore, justifiable cause for postponing the March 30, 1995, date for determining controversies for the 1992-94 DART funds to permit proper and efficient operation of the Office's procedural rules.²

²The statutory requirement of declaring DART controversies 30 days after the close of the claims filing period is obviously a problem that will be

In order to assure that there is not a lengthy delay in distribution of 1992-94 DART royalties, the Office will publish the precontroversy discovery schedule in the **Federal Register** shortly after receipt of the comments on the existence of controversies. In addition to the prehearing schedule, the Office will also announce the date on which controversies will be declared, if any, and arbitration will commence.

Dated: February 23, 1995.

Marybeth Peters,
Register of Copyrights.

Approved:

James H. Billington,
The Librarian of Congress.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-2 and NPF-8 issued to Southern Nuclear Operating Company (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendment would allow modifications to relocate the lower level steam generator water level taps to be made during the upcoming refueling outages for both units. These modifications affect the Technical Specifications associated with the reactor trip system and the engineered safety feature actuation system setpoints.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the

faced annually by the Copyright Office. To correct for the inequities that this requirement poses, the Office will be seeking legislative amendment of 17 U.S.C. 1007(b) in the 104th Congress by changing the phrase "Within 30 days after the period established for the filing of claims * * *" to "After the period established for the filing of claims * * *"

amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.9(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes to the steam generator low-low water level reactor trip and ESF actuation setpoint and to the steam generator high-high water level turbine trip and feedwater isolation setpoint do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR. Several analyses previously performed in the FSAR required re-analysis. All acceptance criteria for the re-analyzed accidents continue to be met. Therefore, there is no increase in the consequences of any previously evaluated accident. The change to the steam generator low-low water level setpoint affords additional margin to spurious trips. No fission product barriers are affected. The relocation of the steam generator lower level tap does not result in increased failure probability of the SG level tap, sensing line, or instrument. Therefore, the proposed changes to the Technical Specifications do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR.

2. The proposed changes to the Technical Specifications do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new limiting single failures or accident scenarios have been created or identified due to the proposed changes. All safety-related systems will continue to perform as designed. No new challenges to any installed safety systems have been created by the proposed setpoint modifications. Therefore, the possibility of a new or different accident is not created.

3. The proposed steam generator water level setpoint changes do not involve a significant reduction in the margin of safety. Some re-analysis was necessary because of the proposed setpoint changes; however, all margin associated with the current acceptance criteria continues to be unaffected. The proposed design and installation of the new level taps using the criteria of the ASME Code with inherent safety factors assure that the margin of safety in the structural integrity of the steam generator shell is not reduced. Setpoint uncertainty calculations have confirmed adequate margin exists between the assumed analysis setpoints and the revised setpoints. Therefore, there is no significant reduction in the margin of safety due to the setpoint changes or the physical modification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a

petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention

and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide reference to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceedings, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman: petitioner's name and telephone number, date petition was

mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 10, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 28th day of February 1995.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

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[Docket Nos. 50-445 and 50-446]

Texas Utilities Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-87 and NPF-89 issued to Texas Utilities Electric Company (TU Electric, the licensee) for operation of the Comanche Peak Steam Electric Station, Units 1 and 2 located in Somervell County, Texas.

The proposed amendment would modify the Comanche Peak Steam Electric Station (CPSES) Technical Specification (TS) 3/4.6.2, "Depressurization and Cooling Systems—Containment Spray System" Surveillance Requirement (SR) 4.6.2.1b,

is replaced with NUREG-1431 SR 3.6.6A.4. This change replaces the specific pump flow and head values now contained in the SR with the general requirement that the pump develop the required head at the flow test point. Also Bases 3/4.6.2.1 "Containment Spray System" will be revised to expand the detail consistent with the NUREG-1431 Bases SR 3.6.6A.4. The Bases from NUREG-1431 has minor modifications to reflect (1) that the CPSES containment spray pumps are tested via a special test line which allows testing at flows higher than that allowed by the miniflow recirculation line; (2) the "pump design curve" is termed the "analytical pump curve"; and (3) the reference to the technical requirements manual where the pump head requirements are defined is provided for the user's information.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The relocation of the specific values for flow and developed head at the flow test point to the Technical Requirements Manual (TRM) is essentially an administrative change. The change does not change the plant hardware or operating procedures. As such, the change has no impact on the probability of an accident.

The consequences of an accident previously evaluated, as it relates to the performance characteristics of the containment spray pumps, depends on the pumps meeting the performance characteristics in the analytical pump curve used by the containment analyses. Since the limitations established in the TRM will continue to ensure that this analytical pump curve is met, there is no impact on the