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Report to Rep. Tom Bevill, Chairman, House Committee on Appropriations: Public Works Subcommittee; by Elmer B. Staats, Comptroller General.

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The Nuclear Regulatory Commission's (NRC's) processing of permit applications for the Tennessee Valley Authority's Hartsville and Phipps Bend powerplants took longer than it should have, and most of the delay was attributable to weaknesses in the NRC's procedures. Two weaknesses were found to delay most, if not all, applications before the Commission: the printing of a notice in the Federal Register and not requiring the Atomic Safety and Licensing Boards to begin hearings within 30 days after an environmental statement is published. A delay in the notice in the Federal Register can delay the start of the public hearing. In addition to the delays experienced in the Hartsville and Phipps Bend projects, the NRC took an average of 50 days to have the notice printed for seven other recent applications. The NRC has granted the two Boards nearly complete discretion in ruling on schedule-related matters in public hearings; granting the Boards such discretion on procedural matters causes the NRC to relinquish all direct control over the hearing schedules. The Chairman of the NRC should: submit notices of hearing on applications to the Federal Register no later than 1 week after the Commission formally accepts applications for review; require Atomic Safety and Licensing Boards to establish at the outset, in consultation with all parties, schedules for completing the public hearing process; and designate a focal point to monitor the progress of license applications and alert the NRC of potential delays so that it can act to mitigate them. (RHS)



B-127945

16 FEB 1978

The Honorable Tom Bevill
Chairman, Subcommittee on Public Works
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

This report concerns the time it took for the Tennessee Valley Authority to obtain Nuclear Regulatory Commission permits to begin construction activities at its Hartsville and Phipps Bend nuclear powerplants. The Commission's processing of permit applications for these plants met several delays and took longer than they should. In our opinion, most of the delay is attributable to weaknesses in the Commission's process.

This report discusses the delays experienced in both projects, the Commission's procedural weaknesses that delayed the projects as well as others, and our recommendations for correcting these weaknesses.

COMMISSION PERMISSION TO START
CONSTRUCTION

Before a utility can begin any construction activities at a site where it plans to build a nuclear powerplant, it must receive permission--usually in two stages--from the Commission. The first stage, referred to as a limited work authorization, allows a utility to clear the site and do other construction activities. Before a utility can begin actual construction of the powerplant, it must receive further permission--either an additional authorization or a construction permit--from the Commission.

The process that must be carried out to get these authorizations is complex and time consuming. Basically, before a limited work authorization can be issued, the Commission must be assured that the proposed plant will not present any significant environmental damage, that the site is suitable, and that the required National Environmental Policy Act of 1969 environmental review is complete. To get this assurance, the Commission requires the applicant to submit a report assessing the environmental effects of the proposed plant and a safety report assessing, in part, the site's suitability. Once the

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Commission accepts the utility's environmental report, two separate processes begin. One process is the Commission staff's analysis of the utility's reports resulting in the issuance of an environmental statement and a site suitability report. The second process involves the public hearings, prehearing conferences, and admittance of intervenors to the hearings. This process is controlled by the Atomic Safety and Licensing Board, an independent three-member body. 1/

When the Commission first announced 2/ in January 1974, that it would begin issuing limited work authorizations, it stated that such authorizations could be issued within 10 months after applications were accepted. We have reviewed the Commission's schedules for 11 recent projects and found that the Commission targets were from 11 to 15 months. We did not evaluate the reasonableness of this target time. Actual time, however, has been averaging about 18 months--slightly less than the time it took the Commission to issue limited work authorizations on the Authority's Hartsville and Phipps Bend applications. In this report, we examined the reasons for the delays experienced by the Authority in obtaining limited work authorizations for its two projects.

HARTSVILLE

The Authority applied for permission to construct four nuclear powerplants near Hartsville, Tennessee, on July 1, 1974, and the Commission formally accepted the application on September 13, 1974. Based on the 12 month target which the Commission set for this project, the Authority should have received limited work authorizations in September of 1975 but did not receive them until April 1976--7 months later. The Commission issued full construction permits on May 9, 1977.

The major delays and the reasons for them are discussed below. They do not necessarily, however, add up to the 7 month total delay because (1) there were simultaneous delays in both the environmental review and public hearing processes, and (2) other steps in the processes took less time than originally scheduled.

1/Members are selected from a panel of full- and part-time panel members appointed by the Commissioners.

2/Before this time, the Commission did not authorize any construction activities prior to issuing construction permits.

1. The Commission took longer than its own regulations call for to formally accept the Authority's application. Before the Commission will begin reviewing a permit application, it checks the application to make sure it is complete. The Commission's regulations provide that such a determination of completeness will generally be made within 30 days, but for this project the Commission took 57 days. An additional 18 days passed while (1) the Commission notified the Authority that it would accept the application, and (2) the Authority supplied the required number of copies.
2. The Commission was late in making an announcement in the Federal Register. Once the Commission accepts an application, it then has a notice printed in the Register to alert interested parties that a public hearing will be held and that any parties interested in participating in the hearing must apply within 30 days. Getting this notice printed appears to us to be a very simple matter in that the notice is short and essentially pro forma and can be prepared during the acceptance review and sent to the Federal Register printer no later than 1 week after the application is accepted. For the Hartsville application, it took 33 days.
3. The Atomic Safety and Licensing Board was very late in starting the public hearing. The Commission's regulations state that a hearing should start no later than 30 days after the staff issues its final environmental statement, unless the parties agree otherwise or the rights of any party would be prejudiced thereby. The Board, therefore, should be timing its pre-hearing activities so that it will be ready to start the hearing shortly after the environmental statement is completed. This was not the case in the Hartsville application. The Commission staff established about a 6-month target time that it would need to publish an environmental statement. But the statement was late by 3 months. Therefore, the Board had a total of 9 months to get ready for the hearing. Even so, the hearing did not start for 4 additional months which means the Board took over 1 year to set up and begin the public hearing.
4. A Federal court decision caused the Commission to temporarily stop issuing permits. The Authority applied for a second limited work authorization --to enable additional work to be done at the

site--on June 10, 1976. While the Commission was reviewing this matter, a Federal court rendered a decision on the Commission's environmental reviews which caused the Commission to suspend its issuance of permits. This suspension unavoidably delayed the issuance of this permit for about 3 months.

PHIPPS BEND

The Authority filed its application to construct two nuclear powerplants in Hawkins County, Tennessee, on October 1, 1975. The Authority did not file its environmental report --which is needed to start the process to get a limited work authorization--until December 23, 1975. The Commission rejected the report as incomplete, and accepted a revised report on April 1, 1976. The limited work authorization was not issued, however, until October 18, 1977, 4 months later than the target date the Commission set when it accepted the environmental report. The Commission issued construction permits on January 16, 1978.

The major delays, and the reasons for them, are described below. As in the case of Hartsville, discussed above, these delays are not intended to exactly account for the 4 month total delay.

1. It took more than 3 months to get the Authority's environmental report accepted because (1) the Authority failed to submit a complete report and (2) the Commission did not notify the Authority within 30 days that the report was incomplete (it took 52 days).
2. The Atomic Safety and Licensing Board was very late in starting the public hearing. Just as in the Hartsville case, the Board took more than a year (over 15 months) to start the hearing. Included in this period was a 2-1/2 month delay that resulted because the Board simply forgot to set up a conference that was necessary to start the public hearing process.
3. The Authority challenged the Commission's jurisdiction over the Authority under the National Environmental Policy Act of 1969. As a result, the Board stopped all other aspects of the hearing process until it ruled on the jurisdictional dispute.

As in the Hartsville application, the Commission was late in making a public hearing announcement in the Federal Register

--it took 25 days after the Commission accepted the environmental report. In this case, however, the late announcement did not delay issuance of the limited work authorization.

CONCLUSIONS; OBSERVATIONS AND
RECOMMENDATIONS

It took months longer than it should have for the Authority to get Commission permission to start site work for its two projects, Phipps Bend and Hartsville. Most of the blame for these delays rests with the Commission. Although we concentrated our work on these two projects, we found two weaknesses in the Commission process that act to delay most, if not all, applications.

The first is the printing of a notice in the Federal Register. This notice is both important and yet simple. Important because it sets the hearing process in motion; simple because it is routine and administrative in nature. A delay in the notice can delay the start of the public hearing. In addition to the delays experienced in the two Authority projects, we found that for seven other recent applications, the Commission took an average of 50 days to have the notice printed. In our view, the notice should be delivered to the Federal Register printer no later than 1 week after the application is accepted.

The second weakness is that the Commission does not require the Boards to adhere to the Commission regulations that hearings should start within 30 days after the environmental statement is published. The Commission has granted Atomic Safety and Licensing Boards nearly complete discretion in ruling on schedule-related matters in public hearings to insure that substantive issues can be fully developed in an impartial proceeding that is fair to all parties. While a full airing of the issues is imperative, granting the Boards such discretion on procedural matters causes the Commission to relinquish all direct control over the hearing schedules. For example, in the Phipps Bend proceeding, the Board did not attempt to schedule and conduct the pre-trial phase of the hearing in accordance with the Commission's regulations. As a result, the Board was not ready to begin the trial phase until 5 months--instead of the called for 30 days--after the Commission staff published its environmental statement. Yet, the Commission has no controls to insure that Boards try to meet this requirement.

We believe the Commission could achieve a reasonable balance between the potentially conflicting objectives of

fair and impartial hearings and timely licensing decisions if it required Boards to establish and follow hearing schedules similar to those prepared by the Commission staff for its safety and environmental reviews. Hearing schedules could be established at the first prehearing conference. Such a procedure would not violate the rights of any party because the Board could at this conference, hear and weigh arguments from each party on the proposed schedule, and then modify it as the Board deemed appropriate.

Furthermore, in view of the several parallel processes involved in the Commission's licensing review, the Commission should designate a focal point, with appropriate authority and responsibility, to monitor the progress of all nuclear power-plant license applications. In this way, the Commission could be alerted to potential delays and act to mitigate them. Such a control function could have prevented the 2-1/2 month delay in the Phipps Bend hearing caused by the Board's forgetting to schedule a prehearing conference.

Recommendations

We recommend that the Chairman, Nuclear Regulatory Commission

- submit notices of hearing on applications to the Federal Register no later than 1 week after the Commission formally accepts applications for review,
- require Atomic Safety and Licensing Board's to establish at the outset--in consultation with all parties--schedules for completing the public hearing process, and
- designate a focal point to monitor the progress of license applications and alert the Commission of potential delays so that it can act to mitigate them.

AGENCY COMMENTS

Because of time constraints, we did not obtain written comments from any parties on this report. It was, however, discussed with the Authority, the Commission staff and the Atomic Safety and Licensing Board, and we incorporated their comments as we believed appropriate.

Disagreement with the thrust of our recommendations was expressed by the Atomic Safety and Licensing Board. The Board disagreed with our recommendations that the Commission (1) require Boards to set schedules for completing the hearing

process and (2) designate a focal point for monitoring licensing proceedings.

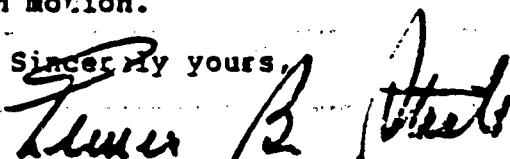
On setting schedules, the Board said there are so many variables--for example the number of intervenors and contentions, availability of witnesses, and the timing of Commission staff documents--that any schedule rigidly followed could be unfair to one or more of the parties. The Board also said that a Commission focal point to monitor licensing proceedings would likely have detrimental effects on the stability and predictability of the licensing process because parties' procedural and substantive rights would be sacrificed to meet arbitrary schedules.

We recognize that there are many variables in the hearing process, and that the rights of all parties to a fair hearing must not be sacrificed to meet a schedule. Fairness, however, also includes the applicant's right to a licensing decision without unnecessary delay. We must point out that a Board could adjust a hearing schedule to fit the evolving circumstances of the licensing proceeding. This is precisely what the Commission staff does with its safety and environmental review schedules. Furthermore, the proposed focal point need not have the power to dictate schedules to licensing Boards and the Commission staff; but merely to insure--by monitoring the simultaneous public hearing and staff review processes of each licensing proceeding--that each succeeding step in each process is taken without needless delay.

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This report contains recommendations to the Chairman, Nuclear Regulatory Commission. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first appropriations request made more than 60 days after the date of the report. We will be in touch with your office soon to arrange for release of the report so that this requirement can be set in motion.

Sincerely yours,



Comptroller General
of the United States