

EFFECTIVE DATE: March 27, 1989.

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SUPPLEMENTARY INFORMATION: Following the March 1979 accident at Three Mile Island, Unit 2 (TMI-2), the Commission took a number of regulatory measures designed to provide the appropriate mechanisms for assimilating the regulatory changes resulting from TMI-2 into the ongoing process for facility licensing. Principal among these was the Commission's issuance of policy guidance on how the regulatory requirements imposed as a result of the TMI-2 incident were to be considered in the context of ongoing adjudicatory licensing proceedings and its suspension and later revision of the existing rule by which the initial decision of an Atomic Safety and Licensing Board authorizing issuance of a construction permit or an operating license was considered to be immediately effective. In the years since the accident, however, the Commission has taken a variety of responsive regulatory actions that raise questions about the continuing efficacy of its earlier policy statements concerning litigation of TMI-related issues and the suspension of the immediate effectiveness rule. Since the accident, the agency has identified various "lessons learned" from the TMI-2 accident, which are embodied in NUREG-0737, "Clarification of TMI Action Plan Requirements" as well as specific licenses and orders. It also has implemented changes to update regulatory requirements on the basis of these "lessons." See, e.g., 10 CFR 50.44 (hydrogen control); 50.47, 50.54(s), and Appendix E to Part 50 (emergency planning); 50.54(w) (property insurance); Part 55 (operator training). The NRC staff has advised the Commission that all regulatory changes needed to implement NUREG-0737 have been completed and that compliance with existing regulations and orders is a sufficient response to all applicable TMI-2 accident "lessons learned." As a result, the Commission now believes further action is appropriate regarding the policy established by several policy statements published after the TMI-2 accident and discussed below.

I. Commission Policy on Litigation of TMI-Related Issues in Power Reactor Operating License Proceedings

Current Commission policy on the appropriate parameters for applicant and intervenor litigation of TMI-related issues in operating license proceedings is set forth in a Commission Policy Statement, CLI-80-42, 12 NRC 654 (1980) (45 FR 85236; Dec. 24, 1980). However,

the implementation of TMI "lessons learned" and other events have rendered much of the background discussion in this 1980 policy statement outdated and confusing. Also, while the Commission previously noted that very few operating license hearings have involved the litigation of these issues (48 FR 13987, 13988; Apr. 1, 1983), there nonetheless are facilities under construction for which certain specific guidance afforded by the policy statement could be pertinent. Accordingly, the Commission has decided to rescind that 1980 policy statement, but to provide the following supplemental guidance for the litigation of TMI-related issues in operating license proceedings:

In conjunction with existing NRC regulations, the guidance for new operating licenses found in NUREG-0737, "Clarification of TMI Action Plan Requirements," can serve as the basis upon which the NRC staff makes a determination about whether an applicant meets the necessary requirements for issuance of an operating license as the NUREG-0737 guidance interprets, refines, or quantifies the general language of existing regulations. The parties to a proceeding may challenge the guidance in NUREG-0737 as unnecessary on the one hand or insufficient on the other to meet existing regulations. Parties to a proceeding, the Licensing Boards, and the Appeal Boards also should heed the additional Commission guidance regarding the litigation of TMI-related issues given in *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361 (1981).

II. Policy Statement Relating to Immediate Effectiveness

Prior to the Commission's action in November 1979 adopting the now rescinded Appendix B to 10 CFR Part 2 (44 FR 65049),¹ the Commission's Post-TMI policy relating to immediate effectiveness of Licensing Board initial decisions authorizing the issuance of construction permits and operating licenses was set forth in an October 1979 statement, "Interim Statement of Policy and Procedure" (44 FR 58559). This policy statement was superseded by the November 1979 action and is hereby formally rescinded. The Commission's existing immediate effectiveness procedures are found in 10 CFR 2.764.

Dated at Rockville, MD, this 16th day of February, 1989.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.

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Statement of Policy on Litigation of TMI-Related Issues in Power Reactor Operating License Proceedings; Revocation of Superseded Policy Statement Concerning TMI-Related Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; revocation of policy statement.

SUMMARY: The Nuclear Regulatory Commission is issuing an updated policy statement on the manner in which the applicant and any intervening party to an NRC operating license proceeding can raise a challenge to those requirements imposed upon utilities seeking an operating license as a result of the March 1979 accident at Three Mile Island, Unit 2. In addition, the Commission is revoking another policy statement relating to requirements imposed after the Three Mile Island accident as superseded by subsequent agency action.