

July 20, 1978

NUCLEAR SITING AND LICENSING ACT **(H.R. 11704 - S.2775)**

STATUS

On March 21, 1978, HR 11704, the Nuclear Siting and Licensing Act, was introduced in the House of Representatives by Rep. Morris Udall (D-Arizona). Initially, Udall's House Interior Committee was given exclusive jurisdiction over the measure. Rep. John Dingell (D-Michigan), Chairman of the House Commerce Committee's Subcommittee on Energy and Power, objected, and as a result an informal agreement was reached which would allow for sequential referral of the bill to Dingell's subcommittee. On April 4, 1978, the House Interior Committee held one day of hearings to allow the Department of Energy to present the Administration's version of the bill. Subsequent hearings were scheduled for May 22, 24, and 25. Additional hearings will continue over the balance of the summer.

On the same day that Rep. Udall introduced HR 11704 in the House, Senator Gary Hart (D-Colorado) introduced its companion measure, S. 2775, in the Senate. Hart's bill has been referred to the Senate Committee on Environment and Public Works Subcommittee on Nuclear Regulation. The subcommittee held one day of hearings on May 18, again so that the Department of Energy could present the Administration version of the bill. As with the House, other hearings are also expected over the course of the summer.

At present, it is not anticipated that this bill will receive floor action this year.

BACKGROUND

Although there was a brief stabilization of the use of electrical energy as the result of the Arab oil embargo's effects on the economy, the return of more normal economic activity witnessed a return of the growth of demand for electricity to historic levels. Since around 1950, this has hovered around 7 percent per year, or twice the growth rate for all other types of energy. Efforts towards conservation may reduce this rate of growth in the future, but as yet evidence of this reduction of demand has not been demonstrated. The effects of the embargo coupled with the recent recession have temporarily caused a surplus of electrical generating capacity, resulting in a somewhat misleading picture of overall capacity. It is currently thought that in spite of present large capacity margins there is in fact an incipient shortage which will become more evident in the next two to three years.

Until quite recently it was expected that a vigorous program of construction of nuclear-fired generating stations would take place. By the end of the century, such power facilities were to provide a majority of the electricity consumed in the United States. Gradually, this estimate has been reduced, but nuclear power is still expected to contribute a significant amount of our overall requirements.

By 1986, current plans call for nuclear power to provide something over 20 percent of all generating capacity; and by the end of the century, it is expected that such facilities may account for as much as half of all our generating stations. This goal can only be attained, however, if the current long lead-times required for building a nuclear power plant can be reduced to more reasonable levels.

At present it takes anywhere from twelve to fifteen years to build a nuclear power station in the United States. The overwhelming majority of this time is consumed by the regulatory process. Critics of this process claim that a significant amount of the time spent complying with the current procedures is wasted or is the result of dilatory tactics by intervenors, and that the result of these unnecessary delays is to greatly increase the cost of electrical power to the consumer. To support their assertions, the critics frequently cite examples of the time required for similar projects in other nations.

For example, in Canada, where a Royal Commission has responsibility for reactor construction and siting, their more complex design reactor can be built in six years. In Japan, where a reactor configuration identical to that used in the United States is employed, the total time required for construction is around four years. In other nations, similar examples

abound. The main point is that in most nations outside the United States, the time required for the construction of nuclear facilities is far shorter than it is here.

That this fact is recognized is evidenced by the recent assertion by the Administration that their licensing bill could reduce the time required to build a nuclear power plant by half, without in any way reducing the consideration of environmental questions or safety questions. This assertion was recently re-emphasized by the President in his speech at Oak Ridge.

An attempt to streamline the regulatory process as it applies to nuclear power facilities would appear to be a logical course of action as we attempt to provide for our future energy needs. The fact that it appears logical, however, does not mean that such a course of action would be without controversy. Groups which oppose nuclear energy on principle are likely to generate considerable activity aimed at undermining the legislation as they see anything which furthers development of this energy source as contrary to their long-range goal of its abandonment. Whether their efforts will focus on preventing the bill's passage or on amending it so that it is meaningless is not yet evident. What is certain is that there will be considerable pressure brought to bear on Members of Congress, as the opponents of nuclear energy are both highly vocal and well-organized. What effect this pressure will have remains to be seen.

PROVISIONS: OVERVIEW

The Nuclear Siting and Licensing Act is comprehensive in its scope. Virtually every aspect of the regulatory concept, including a number of innovations, is considered by this legislation. The bill is divided into three main titles, Title I dealing with planning, siting and licensing, Title II dealing with Federal and State Reviews, and Title III dealing with intervenor funding. A fourth title contains conforming amendments.

Perhaps the most important aspect of this legislation is that it attempts to introduce a number of new concepts aimed at eliminating previous delays caused by the re-introduction of previously decided issues in successive cases, and others maximizing public participation in the early stages of site and plant approval. States also exercise a significantly increased authority under the provisions of the bill.

TITLE I: HIGHLIGHTS

Title I's first section (Sec. 101) deals with advance planning and early notification. It requires that anyone intending to

file an application with the Nuclear Regulatory Commission to obtain approval of a construction permit, operating license, or standardized facility design give six months advance notice that they are going to do so. The NRC is then required to publish public notice of receipt of the letter of intent within ten days. Applications for approval of previously approved (standardized) designs are exempt from this provision.

Section 102 of the Nuclear Siting and Licensing Act addresses construction permits and operating licenses. It requires that states certify the need for any proposed facility prior to the issuance of such permits. Applicants for state certification are required to present detailed justifications of the need for power, demonstrating that all alternatives to nuclear power have been considered. The act specifically includes conservation as one of the alternatives which must be considered. Once the state has issued such certification, no further certification of the need for power may be required.

Under Section 102, the NRC may issue a combined construction permit and operating license, provided there is sufficient information in the original application to warrant such action. The requirement that the state must certify the need for the facility also applies to the issuance of combined permits. The combined construction and operating license will allow the contractor to begin initial work even though final approval has not been granted, although this work will be solely at the applicant's risk.

Section 103 of the Act covers hearings. It defines standing in an extremely broad fashion, stating that "...any person whose interest may be affected by the proceeding..." would be allowed to call for a hearing. The use of the word "may" allows virtually anyone to initiate such action.

While this section generally exempts standardized designs from the requirement for hearings, it does allow hearings to be called for in the event that an individual wishes to raise a "significant new issue", or has "significant new information" he wishes to bring to the Commission's attention. Hearings are limited to issues which have not been raised in previous proceedings, except where the applicant can show that such information relevant to the issue has been discovered, and that such information would bear on the facility's compliance with the Commission's regulations for the protection of public health and safety, etc. Section 103 also provides for the issuance of interim licenses prior to the completion of hearings.

Section 104 provides the conditions under which interim licenses will be granted. These conditions include that such a

permit would be in the public interest, that in all respects other than the completion of the hearings, the commission's requirements have been met.

Section 105 deals with early site approval. The intent of this section is to develop a backlog of pre-approved sites which would be available as the need arose, thereby eliminating the necessity for lengthy hearings. The process for approval would entail the same requirements as normal site approvals, along with specifications as to what type of facility would eventually be located on it. Such approval would be valid for ten years, and could be renewed for successive ten-year periods by approval of the Commission. The need for power requirements is essentially eliminated by the assumption of a generic need for future power. The act also specifies that approval of a site for a nuclear facility would not preclude its use for some other type of power station.

Section 106 deals with the approval of standardized designs. Like Section 105, it is aimed at eliminating the need for hearings on each individual reactor. The approvals for standardized designs would be valid for five years and could be renewed for successive three-year periods. As with the section dealing with combined operating licenses and construction permits, hearings could be required if an individual alleged that there were "significant new issues" related to a standardized design or had "significant new information" bearing on a previously examined issue.

ANALYSIS

While many innovations are contained in the provisions of the Nuclear Siting and Licensing Act, to a large degree they could be seriously undermined by a broad interpretation of the terms "significant new information" or "significant new issue." The manner in which these two clauses of the Act are defined will largely determine how effective the reforms are. Should the commissioners narrowly define them, the early siting and licensing provisions and the standardized designs should allow for a considerable reduction of the currently experienced delays. On the other hand, should these clauses be broadly defined, the dilatory tactics which some attribute to the creation of unnecessary delay could still be employed.

A second concern is related to the requirement that conservation be considered as an alternative in determining the need for power. The problem with this requirement is that conservation is largely a matter of individual initiative. This is certainly true in, for example, purchasing a smaller car, installing

insulation, or lowering a thermostat setting. Short of massive government interference in the daily lives of the majority of our citizens, there is no sure way of guaranteeing that it takes place. Therefore, predictions of future power requirements predicated on long-range estimates of conservation effects must be largely speculative. This element of uncertainty cannot help but make the planning of power facilities designed to provide electricity for periods of thirty to forty years more difficult.

Perhaps the key to the ultimate effectiveness of the Nuclear Siting and Licensing Act with regard to reducing the amount of regulatory delay associated with design or siting lies in the form the provisions related to early siting and standardized design finally take. Should these two sections of the measure emerge from the Congress in a fairly strong form, then they can be expected to contribute significantly to reducing the time required to obtain a permit. On the other hand, should the qualifications attached to them be so strong as to allow a continuation of the current employment of dilatory tactics by intervenors, they may wind up being little more than cosmetic.

TITLE II: HIGHLIGHTS

Title II deals with various types of reviews at the state and federal level. It provides for the review of all reactor designs except those which have been pre-approved as standardized designs, but allows standardized designs to be subject to review in the event of "significant new information" or a "significant new issue." All reports regarding the findings of the Advisory Committee on Reactor Safety regarding those designs will be made public, except where national security matters are concerned.

Section 202 deals with the option for state acceptance of the responsibility for environmental review. The state must be notified of a license application within 10 days of receipt of that application, and then has 60 days to indicate whether it wishes to take responsibility for the review of environmental considerations. The state may opt to take on all or just part of this process. If it does exercise this option, the NRC is prohibited from issuing a license, construction permit, or site approval until it has approval from the state. Further, the NRC will not be able to make a determination of environmental acceptability until it has received approval from the state. In effect, this provision would be a state veto power over nuclear facilities. The same requirement for state approval would also apply to findings of a need for power.

Once the state review was complete, no further challenge would be allowed either before the NRC, or in the courts. Also, the election of a state to make the environmental determination

frees the NRC from that responsibility, except that it would retain responsibility for the radiological aspects of the environmental review. Where the state had overall responsibility for the review, the NRC determination regarding the radiological aspects would be incorporated within the body of the state's review, but the state would not have the right to challenge the NRC's findings.

The NRC would have to certify the state review process. The bill sets out nine basic criteria which must be met in order for the Commission to issue its approval. Basically, these criteria focus on compliance with NEPA procedure and assurances that the state review process is fully coordinated both within the state and with appropriate federal agencies. One particularly important requirement is that the state review process take all conservation and alternatives into consideration.

The Commission is authorized to provide funds to assist in the development and maintenance of state programs. Part of these funds may be used by the state to provide funding for intervenors.

ANALYSIS

Perhaps the most important change which would occur in the regulatory process under the provisions contained in Title II of the Nuclear Siting and Licensing Act is that the role of the states would be greatly increased. The option of having states conduct environmental and need-for-power reviews essentially constitutes a state veto over nuclear siting and licensing. Again, the form in which this provision ultimately emerges will be the determining factor as to whether it ultimately helps to streamline the regulatory process or ends up further hampering the development of nuclear power.

One certainty is that the provision which allows states to provide some of the funds for intervenors is bound to be hotly contested. Intervenor funding is a highly controversial concept and is vehemently opposed by business interests.

One aspect of Title II which stands out is that, again, the concept of consideration of alternatives is emphasized, and conservation is included among the alternatives. The same problems which would have been associated with the requirement that conservation be considered as an alternative to bulk power generation under the provisions of Title I remain under Title II. It may be that this section becomes the subject of a great deal of debate during the consideration of the legislation. Similarly, the concepts of "significant new information" and "significant new issues" as they relate to standardized designs and

pre-approved sites may cause problems with the environmental considerations under the various reviews addressed in Title II.

TITLE III

Title III establishes a pilot program to fund intervention in Nuclear Regulatory Commission proceedings by outside groups. All Commission proceedings with the exception of hearings dealing with export licenses are included under this program. The funds are to be allocated by the Commission and are restricted to individuals who are actually parties to the proceedings. There is a specific prohibition against payment for merely attending hearings.

The title explicitly states that the establishment of the program is not intended to create a new right to intervene.

Payment is to be determined by the Commission on the basis of prevailing market fees for the cost of similar services. Advance payment can be authorized where need is demonstrated, and the payment of attorney's fees is included among the areas for which payment can be authorized.

Repayment of funds can be required under some circumstances, as can the cancellation of schedule payments. The basic grounds for denying payment or requiring repayment are evidence that the litigant has engaged in dilatory tactics or has not performed as represented in the request for payment. Decisions made by the Commission may not be overturned on the basis of non-payment except where a clear abuse of discretion is demonstrated.

ANALYSIS

As with the previous section, the payment of funds to intervenors is bound to be a hotly contested section. Industry is strongly opposed to the payment of intervenors, contending that they do not represent the public as they claim, and often engage in dilatory tactics. While the bill specifically provides a mechanism under which fees could be recovered if it was found that the party to whom the fees were paid was participating in the proceeding merely to delay it, the fact would remain that the delay had occurred. Also, since it must be demonstrated that the participant had no other source of funds prior to the payment of fees being approved, recovery might be quite difficult. A third objection which has been raised in this regard is that the Commission must make a specific finding that the participant's actions were intended only to delay in order to order repayment. This would, in the eyes of some observers, be virtually impossible to prove. A final objection which has

been raised is that intervenors frequently are following their own narrow interests, and are not truly representative of the general public. Therefore, the payment of public monies to present viewpoints to which a majority of the public may be opposed is improper.

Those favoring intervenor payments claim that they are necessary to insure that the public is adequately represented. They assert that the civil servants charged with this responsibility are so often co-opted by industry that they cannot effectively function as a voice for the public interest.

CONCLUSION

As the Congress initiates its hearings on the Nuclear Siting and Licensing Act of 1978, one thing is certain: the deliberations will be fraught with controversy. To the opponents of Nuclear Energy, passage of such a bill is anathema, as it would frustrate the achievement of their ultimate goal of the abandonment of the atom. For those in the position of having to provide the electric power our nation will need in the coming years, the bill is seen as crucial. For the nuclear industry in the United States, it could spell life or death. With so much at stake, there can be little doubt that the debate is likely to be both extended and acrimonious.

Milton R. Copulos
Policy Analyst