DOCUMENT RESUME

06501 - [B1986992]

The Department of Energy's Nuclear Powerplant Siting and Licensing Bill. July 12, 1978. 9 pp.

Testimony before the Senate Committee on Environment and Public Works: Nuclear Regulation Subcommittee; by Monte Canfield, Jr., Director, Energy and Minerals Div.

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Organization Concerned: Department of Energy; Nuclear Regulatory Commission.
Congressional Relevance: Senate Committee on Environment and Public Works: Nuclear Regulation Subcommittee.
Authority: Nuclear Siting and Licensing Act of 1978. National Environmental Policy Act of 1969.

The proposed Nuclear Siting and Licensing Act of 1978 seeks to improve the nuclear powerplant licensing process by: expediting licensing through early site approval and preapproved standard powerplant designs, clearly delineating the respective roles of Federal and State regulators, and modifying public participation to reduce potential delays in the licensing process. Nuclear powerplant designs and potential sites would be reviewed and approved by the Nuclear Regulatory Commission (NRC) in advance of use by utilities. This approach is already being implemented administratively and has not resulted in reduced leadtimes. The proposed legislation would permit NRC to issue a combined construction and operating license after one review. This would eliminate much duplication, but other alternatives should be considered. Provisions for eliminating mandatory reviews by the Advisory Committee on Reactor Safeguards on applications for nonstandardized plants were not favored. The Bill also makes unnecessary changes in the extent of public participation in the licensing process. (HTW)

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
Expected at 9:30 a.m.
Wednesday, July 12, 1978

STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON NUCLEAR REGULATION
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
ON
THE DEPARTMENT OF ENERGY'S NUCLEAR
POWERPLANT SITING AND LICENSING BILL

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to be here today and discuss our views on the Administration's proposed Nuclear Siting and Licensing Act of 1978. As you know, this subject was addressed in our report to the Congress dealing with nuclear powerplant licensing. 1/

BASIS FOR THE LEGISLATIVE PROPOSAL

In recent years, the nuclear industry and the general public have been concerned about the efficiency and effectiveness of the nuclear powerplant licensing process. Concerns range from the time required to plan, design, and construct a nuclear powerplant to anxieties over changing regulatory requirements, increasing costs, redundant reviews, and the adequacy of public

1/Nuclear Powerplant Licensing: Need for Additional Improvements; (EMD-78-29) dated April 27, 1978.

input into regulatory decisionmaking. These have contributed to an indefinite licensing climate and have tended to restrict the use of the nuclear option.

Currently, it takes from 10 to 12 years to plan, license, and build a nuclear powerplant. While 4 years of this time can be attributed to NRC's licensing process, plant construction accounts for more than 6 years. Industry representatives claim, however, that changes in licensing requirements often contribute to the length of the construction time.

The Administration's bill seeks to improve the licensing process in three ways:

--First, by expediting licensing through early site approval and pre-approved standard powerplant designs,

--Second, by clearly delineating the respective roles of Federal and State regulators, and

--Third, by modifying public participation to reduce potential delays in the licensing process.

We are sympathetic with the basic objectives of the Administration's bill. However, in our view, the bill will not substantially reduce powerplant leadtimes beyond what can be accomplished through existing NRC procedures and authority. We also believe the bill unnecessarily eliminates the mandatory reviews of custom-designed plants by the Advisory Committee on Reactor Safeguards and unnecessarily changes the extent of public participation in the licensing process.

Standardization and early site reviews

There are two key elements in the Administration's proposal for reducing nuclear powerplant licensing leadtimes: one is early site review and the other is standardized plant designs. Under these concepts, nuclear powerplant designs and potential sites would be reviewed and approved by NRC in advance of use by utilities. Reduction of 2 to 4 years in licensing leadtimes could be realized under these concepts. However, leadtime reductions do not hinge solely on passage of this legislation because these concepts already are being implemented administratively by NRC. Reductions have not been achieved yet because the implementing procedures are new or have not been fully used by industry.

We would also like to caution that it may be difficult to implement the standardized plant design concept because uncertain demand for nuclear powerplants may discourage the development of standardized designs; because both NRC and applicants have historically been unsuccessful in limiting design changes, which acts to reduce the effectiveness of a standardization program; and because a number of architectural engineering firms believe that standardizing some parts of the final design may violate anti-trust laws.

Combined construction permit and operating license

Currently, NRC conducts two separate reviews and issues separate licenses to construct and to operate nuclear

powerplants. The proposed legislation would permit NRC to conduct only one review and issue a combined construction and operating license.

As noted in our report, 40 percent or more of the review work NRC does before issuing an operating license duplicates work it already did to issue a construction license. Therefore, we agree with this proposal and see no reason why the review process should not be flexible enough to allow NRC to perform either a one-stage or two-stage review, depending on the availability of information and degree of standardization.

There are, however, other alternatives we recommended in our report that NRC consider. These involve a combination of one-stage and two-stage reviews. One alternative is to allow some individual technical branches or disciplines to perform a one-stage review when parts of the application contains sufficient detailed information. Other branches and disciplines, where detailed information is not available, would continue to follow the traditional two-stage approach. Another alternative is to permit utilities to submit a construction permit application and update it as final design data becomes available. This would eliminate the need for a separate operating license review. NRC agreed to study these options.

Eliminating mandatory ACRS review

The legislative proposal would change the role of the Advisory Committee on Reactor Safeguards in the licensing process. Currently the ACRS reviews all construction permit and

operating license applications. Under the proposed legislation, the ACRS review would be mandatory when a standardized plant design is being reviewed for the first time. Thereafter, the approved standardized design could be used without the need for another ACRS review.

However, the legislation also eliminates the mandatory ACRS review on applications for non-standarized or so-called custom-designed plants. Our survey of NRC's technical review staff, found that a large majority believe the ACRS reviews are of benefit. They told us the ACRS sometimes raises questions not covered by the NRC staff and this generally makes the staff do a better job. Also, in our view, public confidence is heightened by the independence of the ACRS evaluation.

Therefore, even though the proposed legislation would permit the ACRS to review any application it wished, we are not in favor of eliminating the mandatory ACRS review of applications for non-standardized plant designs.

Coordination of State and Federal environmental reviews

The legislative proposal would also allow States with federally-approved programs to conduct all or part of the reviews required by the National Environmental Policy Act of 1969. Currently the 27 states which perform some type of environmental review for nuclear powerplants duplicate some of what is done by NRC. While shifting NEPA review

responsibilities could encourage States to cooperate more closely with NRC, significant reductions in licensing times would be more likely only if the early site approval concept is used. Under the proposed early site review program and NRC's current program, the environmental review could be conducted years before the utility starts or plans construction work at the site. It seems to us, it makes little difference who conducts the environmental review, for it should have no effect on construction schedules.

If, however, an early site review is not performed, it is difficult to assess the impact of State NEPA reviews on timeliness. The reviews could be conducted with varying degrees of timeliness and efficiency, depending upon the State's experience in the environmental review process, as well as the degree of public intervention. Strong arguments can be made that leadtimes could be increased as each State will have to develop its capability and standards. Further, confrontation may even increase, perhaps on a plant by plant basis, if those parts of the public who are opposed to the development of nuclear powerplants feel they can have greater access and influence occur, State and local governmental units.

Public hearing opportunities will be changed

The legislative proposal would modify both the timing and the degree of participation by the public. In terms of timing, it is likely that the plant design and site would no longer be

considered in a single hearing. Instead the issues related to each would be considered separately during the advance approvals of the plant site and the standardized design. These changes appear reasonable, because the public should continue to have ample opportunity to intervene or question licensing decisions.

We are concerned, however, that in those cases where the States conduct the NEPA reviews, NRC would still have the responsibility to assess radiological issues, such as the effects of low-level radiation and potential nuclear accidents on the environment. NRC's determinations in such areas would be binding on the States, and it is not clear that the public would be able to consider them as part of a public hearing process. We recommend, therefore, that the proposed legislation be clarified to allow public hearings on these radiological issues at either the Federal or State level.

We are also concerned that the proposal would change and possibly limit public participation on environmental matters. Currently environmental hearings are adjudicatory in nature, and participants have various rights--including the right to subpoena and cross-examine witnesses and to obtain oral or written statements or documents from other parties to the hearings. Under the Administration's licensing bill, a hybrid type of hearing is proposed. Questions of fact would be settled under adjudicatory procedures, but questions of policy

or judgment could be heard under less formal legislative procedures.

While on the surface this looks acceptable, we are not convinced that it is an improvement to the hearing process. We were told by both the Chairman of the Atomic Safety and Licensing Board Panel and the Chairman of the Atomic Safety and Licensing Appeal Board Panel that most environmental issues for nuclear powerplants are factual in nature. Thus, under the Administration's bill, most issues would still have to be decided during adjudicatory proceedings. Special problems might arise, however, because Boards would have to conduct two separate types of hearings.

The Licensing Board would also have to determine what constitutes a question of fact and whether it should be resolved in an adjudicatory type of hearing. Further, criteria to identify what constitutes a question of fact in order to guide the Board's determinations, will be hard for NRC to develop. Disagreements on both the criteria and the determinations may decrease public confidence and lead to additional court challenges.

Also, the proposed change to legislative type hearings could limit the rights of intervenors to cross-examine or subpoena witnesses and resolve questions to their satisfaction. Accordingly, we have previously recommended to Congress that public hearings on environmental issues continue to provide

intervenors with the rights they currently have under the adjudicatory process.

Intervenor funding

There is one provision in the proposed legislation on which I would like to comment although it wasn't addressed in our report. That provision is for "intervenor funding." The legislation would authorize NRC to establish a pilot program for funding intervenor participation in certain licensing proceedings.

However, intervenor funding would not automatically extend to all types of licensing proceedings. For instance, NRC would have the option to extend the program to rulemaking proceedings or to NEPA proceedings conducted by States. Rulemaking proceedings are the type proposed for approving standardized plant designs and should receive much public intervention. Therefore, if intervenor funding is to be provided, we believe that it should be mandatory--not optional--for NRC to apply it to proceedings leading to the approval of standardized designs as well as the other licensing proceedings cited in the proposed legislation, including those performed by the States.

That concludes my prepared testimony, Mr. Chairman. I will be happy to answer your questions.