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STATE REGULATION OF NUCLEAR POWER

W. Kelly Woods*

I. INTRODUCTION

The subject of this Forum is "Government, Helping or Hurting?" As far as nuclear power development is concerned, the answer is yes and no. In the first place, the record of the nuclear power industry is absolutely remarkable in that, with all of the experience we have had to date, there has never been a single person injured by radioactivity attributed to operation of a nuclear power plant. The industry can be proud of this, but I am satisfied that the only reason it has come about has been because of the outstanding regulation by the federal government.

II. FEDERAL AND STATE REGULATION

The federal government, by helping or making industry acquire these kind of safety standards, has undeniably helped nuclear development. On the other hand, the federal government has had sole responsibility for determining the ultimate disposition of radioactive wastes. For one reason or another, the federal government has been grossly delinquent in solving this problem, and this delinquency is severely hurting the industry. The State of California is on the verge of having a nuclear moratorium until this problem is solved. There is growing pressure in other states for a similar development. This is why I say that yes, the federal government has helped, but they have also hurt.

If I leave the federal government and turn to the state government, I have to admit that to date, the role of the state government in regulating nuclear power has been sufficiently minor that you cannot make

* Former Coordinator, Nuclear and Thermal Energy Council, State of Oregon, B.S., Stanford University; Ph.D., Massachusetts Institute of Technology, 1940; Fellow of the American Nuclear Society.

any generalization as to whether it has been a help or hurt. On the other hand, the state governments are gaining in their regulatory responsibility, and I think it will only be a matter of a few years before we can address whether or not state governments are helping or hurting.

I would like to review the role of the state government in siting and to review the history of the developments. Ten years ago, the Atomic Energy Commission (AEC) took the position that their only goal in the siting of power plants was to look at the radiological hazards and consequences. Early in the 1970s, the AEC issued a construction permit for two nuclear power plants at a site called Calvert Cliffs, in Maryland, on the Chesapeake Bay. Intervenor went to court and alleged that this was a major federal action and that there had been inadequate review of the federal action under the terms of the National Environmental Policy Act (NEPA).¹ The intervenors won.² The district court ruled that the AEC, in siting plants, had to make their own separate and independent review under NEPA, and that this could not be delegated.³ In the meantime, the states for years have been doing environmental review of housing, subdivisions, pulp and paper mills, and coal-fired power plants that are not on federal land, and there was no reason in the states' minds why they could not conduct the nonradiological review of nuclear power plants. The states, for instance, in the Northwest, felt that it was just irrational for somebody in Washington, D.C. to try to tell the Northwest whether or not they needed another power plant. I am sure that people in other parts of the country felt that it was wrong for the federal bureaucrats in Washington to be trying to assess the environmental impact of a plant in their state, when they felt that they could do it more competently than these out-of-state people could. So, about half the states, about twenty-five, now have some kind of a siting procedure within the state.

Then we ran into this rather ridiculous situation where the state was holding their hearings, the AEC was holding their hearings, the same witnesses came before both hearings, and about the same information, except in a variety of different forms, had to be submitted to both groups. As this developed, pressure grew to get some kind of legislation which would overrule the Calvert Cliffs decision. One of the big developments occurred when the AEC was divided into the En-

1. National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 (1976).

2. Calvert Cliff's Coordination Comm., Inc. v. AEC, 449 F.2d 1109 (D.C. Cir. 1971).

3. *Id.*

ergy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission (NRC). The new commissioners in the NRC established a policy that they were trying to enhance state input into the process, and they have been working aggressively and actively with the National Governors Association. The most recent development is the fact that we now have a former state governor in the White House and at the end of February, 1978 the Carter Administration formally told the National Governors Association that their policy was going to be to maximize state input and minimize federal input in the siting process.

I am not going to get into a discussion of this proposed Administration bill.⁴ It has been oscillating back and forth. After it does go to Congress, there will be hearings on it, and how much it will change before it gets out of Congress I do not know. I am very optimistic that this session of Congress will enact some kind of amendments to the Atomic Energy Act of 1954,⁵ which will no longer warrant the Calvert Cliffs decision (requiring the NRC has to make its own independent assessment) and that under the amendment, NEPA evaluations can be done by interested and qualified states.

It is absolutely unreasonable that states which have participated in the decision as to whether or not a plant is needed and if needed, where it should be located, should then turn its head the other way and feign no further interest in that plant. There has been very little discussion at all on the role of the states after plants have been sited.

III. SITING OF NUCLEAR POWER PLANTS

First, in the field of construction of sited plants, although the states have a role in the ancillary facilities, this has to continue to be a federal responsibility. The NRC can afford to develop specialists in the different construction disciplines, instrumentation, mechanical, concrete, and move those people from one site to another as the construction schedule warrants. These people moving from one site to another know what problems have occurred in construction, and they can be sensitive to the possibility of problems in your state. On the other hand, the states are not content to learn only as much as the federal government happens to be willing to tell them. When a federal inspector goes into a plant, before he leaves he has what is called an exit interview, where he sits down with management and reports what was good, what was

4. H.R. 11704, S. 2775, 95th Cong. 2d Sess. (1978).

5. 42 U.S.C. §§ 2011-2296 (1970) (repealed 1974).

bad. He gives management a chance to comment, and to attempt to refute any charges. The NRC has been very cooperative with the states in arranging for a state representative to be invited to sit in on these exit interviews.

Now this has very great advantages for the states. First of all, the states have a rapport with the people that does not exist between the people and the federal government. The state can report to their citizens on the quality of the construction as a result of these exit interviews. They know how often inspections were made, what was inspected, and what was found. On the other hand, there are certain restraints that have to be instituted to make this system work. Initially, the state has to have a single agency that is concerned. We cannot let the federal government get into jurisdictional disputes between state agencies. Secondly, the state must send people to these exit interviews who are knowledgeable and who can comprehend what they are hearing. The whole thing will break down if you try to send a stenotypist to just take notes. Third, the state representative must not use these exit interviews for his personal education. His participation must be constructive. If he does not understand what is going on, he had better learn that at times other than when these federal inspectors are there. Finally, because there have been instances, it is essential that the state representative refrain from any subsequent personal aggrandizement in his relations with the news media.

The siting of nuclear power plants and the construction of nuclear power plants are transient phenomena, for once the power plant is in place, it will be there for forty-odd years. It is incumbent on the states to acquire a cadre of knowledgeable, experienced people, who can, down through the years, follow what is going on at this nuclear power plant. I would like to go back in history a little bit, and note that several years ago, in the siting process, the State of Minnesota tried to impose on the Northern States Power Company, restrictions on how much radioactivity could be released, restrictions which were just a small percent of what the AEC had been allowing. It went all the way up to the Supreme Court, and the court rulings were that the intent of Congress was that the federal government had preempted the states for regulating the operation of nuclear power plants, and that in particular, the setting of radioactivity release limits was part of the regulating of the operation.⁶ I believe it is because of this preemption problem that so

6. Northern States Power Co. v. Minnesota, 320 F. Supp. 172 (1970), *aff'd*, 447 F.2d 1143 (8th Cir. 1971), *aff'd*, 405 U.S. 1035 (1972).

little consideration has been given to the role of the states over an operating plant. It is an unwarranted conclusion. It was a narrow decision on the part of the Supreme Court, and even though certain portions of the regulatory process have been preempted, there still remains a substantial amount of responsibility that the states can and should assume over operating plants.

If the state has indeed participated in the environmental review for the proposed plant, of course they have come up with environmental specifications. It is then the state's responsibility, or should be, to monitor compliance with these environmental technical specifications, and if necessary, to enforce compliance. I will go a step further. Even though the federal government establishes limits on how much radioactive material can be released, it does not violate the preemption concept for the federal government to delegate to the states who are personally and immediately concerned responsibility for monitoring compliance with those federal standards.

In Oregon we have done one thing which has not been done anywhere else in the nation. We have taken several meters in the control room of a nuclear power plant, meters which read the concentration of radioactivity in certain affluent streams. The readings on these meters are being transmitted by telemetry one hundred miles down to Salem, Oregon, into the state police offices, which are manned around the clock. We have a continuous twenty-four hour reading of the concentration of radio-activity in these effluent streams. Sure we are doing some monitoring. The only events we have encountered other than false readings were occasional instances where the utility did not do adequate dillution before discharge. Our main reason for wanting to put these in was so that in the event of an accident, we would know promptly that something had gone wrong out there, without being dependent on the utility to remember to tell us.

IV. STATE RESPONSIBILITIES AND NUCLEAR POWER PLANTS

It is the responsibility of the state to develop, implement and test radiologically emergency response plans. This is done in several states. I can speak from experience in Oregon. We have a simulated accident. We are out on the highway, and we stop cars and hand out a flyer saying we are going through a drill. If this had been for real, we would have asked you to turn around and go back. We take simulated victims by ambulance down to the hospital, and assure ourselves that despite external contamination, that the hospital does have facilities

that can receive contaminated injuries. One of the most important things we found out early in the game is that you cannot expect the radiological health physicist to communicate with others by putting dimes in a filling station pay phone. We now have an adequate supply of radio telephones so that we can communicate with one another in the field. This is a state responsibility.

Mentioning a couple of other things, it is important, I believe, for the state to participate in the review and approval of the security plans, the plans for deterring terrorists. In order to do this, you have to have statutory authority to keep that kind of review exempt from any public meeting law or any public information law. We do not like to have classified material around our office, and the solution has been just to rent a safety deposit box in a nearby bank.

Another role of the state is in fire protection. The operator of a nuclear power plant does not have enough firemen around. He is dependent upon nearby fire districts. By bringing the state in early we show up problems associated with what do we have to go through to get the firemen cleared so that he can get through the security fence and fight the fire. Or what is necessary if we want to go through another security fence in order to pull water out of the river in order to aid in fire fighting. These things can be addressed most effectively at the local level by the states.

I will mention lastly that the state has an important role in public information, just as it did in construction. We have found that it is very helpful if the state can bring pressure on the utility to make sure that incidents which require outages are publicized promptly. This not only helps educate the public, but it avoids the situation as has been encountered where we get a lot of wild rumors floating around that are difficult to squelch.

My last comment is that the state can play a role in the regulation of sited nuclear power plants only if a progressive legislature has passed enabling legislation with proper consideration of adequate financing for this kind of effort.