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Federal-State Relationships in Nuclear Energy Development

FEDERAL-STATE RELATIONSHIPS IN NUCLEAR ENERGY DEVELOPMENT

BY JAMES T. RAMEY*

It has been and is a pleasure for me to participate in the "revisitation" of the Public Land Law Review Commission. As Chairman Aspinall mentioned, we have known and respected each other for many years, first when I worked for him as Staff Director of the Joint Committee on Atomic Energy and then when I was a Commissioner of the old Atomic Energy Commission (AEC).

I thought I would repeat the normal practice I followed with the old Federal Land Review Commission and bring you up to date generally on the uranium resource picture and nuclear power situation. Although my present responsibilities as Senior Energy Advisor to Stone & Webster involve all forms of energy, I still seem to be something of a spokesman for the downtrodden nuclear community.

Back in the 1960's and early 1970 at the time of the Public Land Law Review Commission Report, the uranium market was soft, with U3O8 selling for \$5 to \$7 per pound. With the Arab oil embargo causing the increase in oil and coal prices and inflation generally, the price of uranium jumped up to \$30 and \$40 per pound. Westinghouse, which got overextended, has claimed that there was an international cartel on uranium which pushed up the price.

In 1970, only a few nuclear electric power plants were in operation, but a great many were ordered; there was great optimism as to the future of nuclear electric power. Today there are over sixty nuclear plants in operation, and over one hundred on order or under construction. In 1976, these sixty plants produced around ten percent of total U.S. electric power. In certain areas such as the Chicago metropolitan area, nuclear power accounted for thirty to forty percent of their electric needs, and in New England around twenty-five to thirty percent. In the recent January cold spell, had it not been for nuclear power, there would have

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been cascading blackouts along the east coast from Virginia on down and in the TVA and South Carolina territory.

In the political arena, nuclear power fared well in the states last year. Anti-nuclear initiatives were defeated by a two-to-one majority in six states, including California, Colorado, Oregon, and Washington.

That's the good news. Now for the bad news.

The construction of nuclear power plants has been seriously delayed since 1970, primarily because of the inexperience of manufacturers and constructors, but also because of intervention by environmentalists and others, and restrictions imposed by the courts under NEPA.¹ And in 1974 the impact of inflation and the recession caused financing problems for utilities involving all types of power plants, resulting in substantial deferrals and cancellations of nuclear and fossil plants.

Now in April, 1977, it appears the Carter Administration may indefinitely defer the breeder reactor and reprocessing of nuclear fuel, which could further increase the instability of the nuclear industry.

At this point, and in line with the above discussion, I would like to comment on the BLM Organic Act.² I would like to reinforce Carl Landstrom's statement concerning possible procedural delays due to interpretations by activist judges when construing the general policy language of the Act. I can recall that similar general language in NEPA was interpreted to establish procedural requirements which had important substantive effects, especially in regard to delays. For example, the effect of the *Calvert Cliffs*' case³ in 1971 was to delay the licensing process of AEC by as much as thirteen months. Incidentally, we had developed a legislative history which pretty well established that Environmental Impact Statements (EIS) were *not* to be included in the hearing process. The Court of Appeals for the D.C. Circuit chose to ignore this history.

¹ National Environmental Policy Act of 1969, 43 U.S.C. §§ 4321-4347 (1970).

² Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (to be codified in scattered sections of 7, 10, 16, 22, 25, 30, 40, 43, 48, 49 U.S.C.).

³ *Calvert Cliffs' Coordinating Comm., Inc. v. AEC*, 449 F.2d 1109 (1971).

Now to some comments on Mike Harvey's paper.⁴ I believe he presented a very comprehensive statement on federal-state relations and there isn't much more I can add.

In regard to energy facility siting, there is, of course, a great deal of experience in the nuclear field. I served as Staff Coordinator for the old Joint Committee on Atomic Energy in 1974, after I left AEC, and developed what is known as the "Price" Bill⁵ on nuclear facility licensing. There is a section in that bill authorizing federal-state cooperation in licensing. The old AEC, and now NRC, are already working with certain states (such as New York) in conducting joint hearings, or at least concurrent hearings, so as to utilize the same record on environmental matters. The matter of duplication and excess paperwork between the Federal Government and state governments is certainly something which needs more attention.

In conclusion, I fear I must raise one big question as to the thesis of federal-state cooperation in siting: Do we have the time and funds for the states to get up to speed, or, because of the emerging energy crisis, should we be thinking of more straightforward procedures to bypass the current "red-tape" which is increasingly causing so many delays involving all types of energy facilities?

Joe Swidler, former Chairman of the FPC, and I recently wrote a letter dated March 25 to James Schlesinger giving him the results of a study we have co-chaired on delays affecting electric power plants of all types: fossil, hydro, and nuclear. Our task force, under the sponsorship of Americans for Energy Independence (AEI), concluded that certain regions of the United States may suffer electric power shortages in the next several years (rather than sometime in the 1980's) unless drastic steps are taken soon. This is because the delay trend is increasing rather than diminishing, and electric power demand is getting back to its normal six to seven percent annual rate. Thus, we may be in for an electric power crisis sooner than we think. And efforts to get power plants on the line may require some sort of congressional exception from NEPA and other procedural restrictions, comparable to the exception for the Alaska pipeline.

⁴ Michael Harvey, *FEDERAL-STATE RELATIONSHIPS IN FEDERAL LAND AND RESOURCE MANAGEMENT* (this issue).

⁵ S. 1717, 94th Cong., 1st Sess. (1975).

