



NRC Rulemaking & Regulatory Stability: A Public Advocate's View

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NRC Rulemaking & Regulatory Stability:

“The (former) NRC adjudicatory hearing process was developed as part of a bargain from which the nuclear industry gained a great deal in the late 1950's. In return for accepting extensive federal hearings, the industry was exempted from any state and local regulation of radiological health and safety and received the limitations on liability that are set forth in the Price-Anderson Act.”

Former NRC Commissioner Peter Bradford

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NRC Rulemaking & Regulatory Stability:

“Thus, citizens ...gave up both local regulation of the facility and the additional financial and safety assurances that normal insurance industry operations would have brought.... In return they got a commitment to the full panoply of trial-type procedures as part of the federal licensing process. Now that memories have faded, the industry is seeking to revoke its share of the concessions in that original bargain.”

Former NRC Commissioner Peter Bradford



NRC Rulemaking & Regulatory Stability:

The nuclear industry has failed to take responsibility for construction cost overruns and licensing delays at nuclear reactors and has instead blamed public participation for the collapse of nuclear construction programs in the 1970's and 1980's.



NRC Rulemaking & Regulatory Stability:

Over the last decade, the agency has systematically diminished the public's role in the licensing of nuclear reactors. The NRC has removed the public's rights to hearings and diminished the quality of the hearings they may grant by removing the public's right to cross examination and discovery. These "reforms" were done in the name of regulatory certainty and stability.

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NRC Rulemaking & Regulatory Stability:

“There is little doubt the ‘industry’ would prefer that the hearing process, formal or informal, be minimized to the extent possible.... this does not mean there is a general desire on the part of the public to do away with formal adjudicatory process.”

ASLB Comments on Draft SECY 99-006 on NRC Hearing Process Re-examination; withheld by NRC, released under Freedom of Information Act - 2004 -185.



NRC Rulemaking & Regulatory Stability:

Neither the industry nor Wall Street should be under any illusion that NRC licensing “reform” has solved the problems of nuclear power.

- NRC hearings & public participation did not cause the economic collapse of nuclear construction programs.
- NRC hearings & public participation did not cause delays in reactor operation.
- NRC hearings & public participation reduced the risk posed by current reactors.



NRC Rulemaking & Regulatory Stability:

“The Failure of the U.S. nuclear power program ranks as the largest managerial disaster in business history, a disaster on a monumental scale....and only the blind or the biased can now think that most of the money has been well spent.”

James Cook, “Nuclear Follies” *Forbes*,



NRC Rulemaking & Regulatory Stability:

Construction Cost Overruns before Three Mile Island

Construction Started	Estimated Overnight Cost	Actual Overnight Cost	% OVER
1966-67	\$ 560/kWe	\$1,170/kWe	209%
1968-69	\$ 679	\$2,000	294%
1970-71	\$ 760	\$2,650	348%
1972-73	\$1,117	\$3,555	318%
1974-75	\$1,156	\$4,410	381%
1976-77	\$1,493	\$4,008	269%

Joskow, Massachusetts Institute of Technology, The Economics of Investment in New Nuclear Power Plants in the U.S, EIA Midterm Energy Outlook Conference, April 12, 2005. Note: Figures are in 2002\$/kWe



NRC Rulemaking & Regulatory Stability:

“Contrary to the popularly held myth, the public hearings aspects of the licensing process has never delayed a single nuclear power plants operation by a single week. In deed one reads the many pages of industry, NRC and DOE testimony in vain for a single specific illustration of a licensing delay.”

NRC Commissioner Peter Bradford



NRC Rulemaking & Regulatory Stability:

“On the subject of delays....it turns out that none of the plants were delayed by NRC proceedings.... It turned out that the schedules that had been given us were simply wildly optimistic.”

NRC Commissioner Victor Gilinsky



NRC Rulemaking & Regulatory Stability:

“First, the longest delays occur because of economic factors ..., such as unanticipated declines in demand for power or difficulty in financing a project. These financial delays appear to be more related to the problems of electric utilities in general, especially the “capitol shortage” of several years ago, than to uncertainties created by the regulatory process.”

U.S. Congressional Budget Office



NRC Rulemaking & Regulatory Stability:

- NRC hearings did not cause Three Mile Island.
- NRC hearings did not bring about the cancellation and default of the WPPSS units.
- NRC hearings had nothing to do with the quality assurance breakdowns at Diablo Canyon & Zimmer.
- NRC hearings are not the causing the Midland containment to sink.
- NRC hearings are not even at the bottom of the cost overruns at Shoreham and Seabrook.



NRC Rulemaking & Regulatory Stability:

NRC's Special Group Inquiry Report on the Three Mile Island Accident (Rogovin Report) recognized that:

“Intervenors have made an important impact on safety in some instances-- sometimes as a catalyst in the pre-hearing stage of proceedings, sometimes by forcing more thorough review of an issue or improved review procedures on a reluctant agency.”



NRC Rulemaking & Regulatory Stability:

Safety Improvements Resulting from the Hearing Process

- St Lucie - improved design to cope with loss of offsite power
- Prairie Island - improved steam generator system
- Kewaunee - improved control room design
- North Anna - improved turbine inspections & overspeed detection
- Zimmer, Midland & South Texas - discovery of QA breakdown
- ASLB also listed over a dozen generic improvements.



NRC Rulemaking & Regulatory Stability:

Secrecy & Rulemaking After September 11th:

- NRC Closes the Barn Door....Twice
- Safety Analysis Reports are now Safeguards Information
- Security Clearances & “Need to Know”
- Design Basis Threat Rulemaking
- Terrorism and New Reactor Designs

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NRC Rulemaking & Regulatory Stability:

“Keeping the terrorists guessing about our defenses was presumably one motivation for the secrecy. However, it might also reflect the commission's desire to play down its acquiescence to the nuclear industry's hubristic view that the plants are nearly invulnerable... the commission doesn't seem to have learned the lesson of those attacks — not a thing will be done to reduce the vulnerability of reactors to strikes from the air.”

Bennett Ramberg, New York Times, May 20, 2003



NRC Rulemaking & Regulatory Stability:

The Public will not view NRC Rulemaking as legitimate and regulatory stability will be sacrificed unless participants are afforded equal:

- Access to information
- Access to decision-making
- Access to Justice



NRC Rulemaking & Regulatory Stability:

“A popular government without popular knowledge or the means of acquiring it is but a prelude to a farce or a tragedy or perhaps both.”

James Madison