



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Comm
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November 5, 1979

Anthony Z. Roisman, Esq.
Natural Resources Defense Council, Inc.
917 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Roisman:

This responds to the request of the NRDC dated July 10, 1979, that the Commission, in response to the decision of the D.C. Circuit in Minnesota v. NRC, 602 F.2d 412 (1979), halt further licensing of nuclear facilities and spent fuel storage expansions. The Commission is also in receipt of your supplementary letter of July 13, 1979, regarding the concurring opinion of Judge Tamm.

Our examination of the Court's opinion in Minnesota v. NRC does not lead to the result urged in your letter. In our view, the Court did not intend to impose a halt on power plant licensing or spent fuel expansions. That we think is clear from the face of the opinion itself.

...we think it appropriate in the interest of sound administration to remand to the NRC for further consideration in light of its S-3 proceeding and analysis. In particular the court contemplates consideration on remand of the specific problem isolated by petitioners--determining whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-2009, the expiration of the plants' operating licenses, and if not whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates. We neither vacate nor stay the license amendments, which would effectively shut down the plants. (602 F.2d at 418; emphasis supplied)

The majority opinion, in footnote 10, indicates that the Commission "may integrate the [remanded] issues with the pending S-3 proceeding, designate a follow-on generic proceeding, or follow such other courses as it deems appropriate." (Id at 419) The court expressly "confine[d] its action at this time to rejection of certain contentions by petitioners, notably the claim of need for an adjudicatory proceeding." (Id at 419)

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The Court was aware, of course, that a generic proceeding on a complex issue such as spent fuel storage cannot be completed rapidly, and that while the proceeding is in progress, further licensing amendment requests for the expansion of spent fuel pool capacity will be received and acted upon by the NRC. The Court, however, gave no indication that licensing should be halted while the generic proceeding is in progress. Had the Court intended the result you have suggested, we think it would have clearly indicated that that was its intended course.

The cases you have cited in favor of a licensing moratorium are distinguishable from Minnesota v. NRC. In both Calvert Cliffs' Coord. Comm. v. U.S. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971), and NRDC v. NRC, 547 F.2d 633 (D.C. Cir. 1976), rev'd and rem'd sub nom. Vermont Yankee Nuclear Corporation v. NRDC 435 U.S. 519, 98 S.Ct.1197, 55 L. Ed. 2d 460 (1978), it was found that the Commission had not fulfilled the mandate of NEPA. Issuance of further licenses following these decisions was necessarily delayed until the Commission had responded to the Court's interpretation of NEPA, in the former case by adopting Appendix D to CFR Part 50, and in the latter by preparing the "Interim S-3 Rule". 1/ In Minnesota v. NRC, however, the Court specifically refrained from finding that the Commission was in violation of its statutory responsibilities and instead remanded the case to the NRC "in the interest of sound administration ...". The Court explicitly refused to decide that licenses issued following its decision would be invalid under NEPA or the Atomic Energy Act. Moreover, we do not read Power Reactor Development Co. v. International Union, 367 U.S. 396 (1960), as requiring the Commission to refuse licenses while a generic problem common to all nuclear plants of any design is under study. The Commission's views on the linkage between reactor licensing and waste disposal are set forth in detail in letters written to Senator Glenn this past March. I am attaching those letters for your convenience.

1/ The D.C. Circuit also stayed issuance of its mandate in the S-3 proceeding.

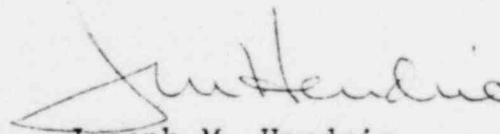
Finally, I would call your attention to the Commission's recent announcement of a generic proceeding in response to Minnesota v. NRC. (Docket copy attached) I refer specifically to the following statement in that announcement (At pp. 5-6 of the attachment):

During this proceeding the safety implications and environmental impacts of radioactive waste storage on-site for the duration of a license will continue to be subjects for adjudication in individual facility licensing proceedings. The Commission has decided, however, that during this proceeding the issues being considered in the rulemaking should not be addressed in individual licensing proceedings. These issues are most appropriately addressed in a generic proceeding of the character here envisaged. Furthermore, the court in the State of Minnesota case, by remanding this matter to the Commission but not vacating or revoking the facility licenses involved, has supported the Commission's conclusion that licensing practices need not be altered during this proceeding. However, all licensing proceedings now underway will be subject to whatever final determinations are reached in this proceeding.

This statement should serve to clarify the relation between the generic proceeding and individual licensing actions, including the expansion of spent fuel storage pools.

For the reasons outlined above, the Commission denies the request of the NRDC to impose a moratorium on reactor licensing or spent fuel pool expansions during the pendency of the generic proceeding on safe disposal of nuclear wastes.

Sincerely,



Joseph M. Hendrie

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March 9, 1979

CHAIRMAN

The Honorable John Glenn, Chairman
Subcommittee on Energy, Nuclear
Proliferation and Federal Services
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Glenn:

Thank you for your letter dated February 6, 1979, in which you requested the Commission's views on certain specific aspects of nuclear waste management. The responses to your questions are enclosed. I would like to point out that while the answer to Question 2 is collegial, the answer to Question 1 expresses my views as well as those of Commissioners Kennedy and Alhearne. It is my understanding that Commissioners Gilinsky and Bradford may be forwarding their views on this question under separate cover.

If you have any further questions concerning this subject, please let me know.

Sincerely,

Joseph M. Hendrie

Enclosure:
Response to Questions
in Senator Glenn's
ltr to Chairman
Hendrie dtd 2/6/79

1396 273

cc: Sen. Jacob K. Javits

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March 13, 1979

OFFICE OF THE
COMMISSIONER

The Honorable John Glenn, Chairman
Subcommittee on Energy, Nuclear
Proliferation and Federal Services
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

POOR ORIGINAL

Dear Senator Glenn:

This is my response to the first question in your letter dated February 6, 1979 to the Commission. That question concerned the Commission's state of confidence at the present time that nuclear waste materials will be safely cared for, the basis for this confidence, and any steps the Commission intends to take in its reactor licensing process to reflect its present thinking on this matter.

I am not satisfied with the basis for the Commission's state of confidence set out in the response transmitted on March 9, 1979. The fact that the classic tenets of waste management are being questioned more heavily today than when the Commission first issued its statement that it had reasonable confidence that waste can and will in due time be disposed of safely indicates the need for a thorough probing of the diverse viewpoints on this issue before the Commission again expresses "reasonable" confidence on the matter.

My own present willingness to continue reactor licensing rests on four points. First, the bulk of the summaries of technical information that I have seen suggest a generalized though incomplete consensus to the effect that long-term disposal is technically possible. Second and very much related, similar evidence suggests that temporary storage of current wastes and those likely to be produced while we are verifying the first hypothesis to the extent possible is within our capabilities. Third, and this is the most tenuous of the four, the little that I know about the possible errors that we might make after more extensive analysis suggests that the risks involved in long-term disposal add very little to my sense of the sum of the

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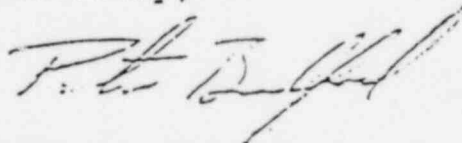
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societal risks that people presently face. Fourth, given the first three points, the costs of abruptly refusing to generate more waste or to build more plants in those regions that still choose to count on them seem to me to be excessive.

Having made those four points, I must quickly add three qualifiers. First, I must reemphasize that the conclusions are tentative, both in light of my own non-technical background and in light of the surprisingly large amount of research still to be done in this field. Second, I intend no disparagement of any state or region that has chosen to do without nuclear power until the uncertainties are resolved to the satisfaction of its citizens. Local cost-benefit balances, alternatives, and tolerances for uncertainty will vary, and the nation can both afford and benefit from diverse approaches. Third, nothing that I have said cuts against setting a reasonable set of "deadlines" for the "solution" of the waste problem and cutting off licensing and perhaps even operation if those deadlines go unmet for unacceptable reasons. I am not talking about a guillotine, but about a management plan that would contain reasonable planning and licensing deadlines after which some combination of Presidential exemption and/or Congressional review would be required for business to continue as usual.

Sincerely,



Peter A. Bradford
Commissioner

cc: Senator Jacob C. Javits

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